
NO. 21313

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

THE STATE OF TEXAS,
Petitioner

v.

FEDERAL POWER COMMISSION,
Respondent

**BRIEF OF PETITIONER,
THE STATE OF TEXAS**

THE STATE OF TEXAS

WAGGONER CARR
Attorney General of Texas

HAWTHORNE PHILLIPS
First Assistant Attorney General

T. B. WRIGHT
Executive Assistant

J. ARTHUR SANDLIN
Assistant Attorney General

C. DANIEL JONES, JR.
Assistant Attorney General

LINWARD SHIVERS
Assistant Attorney General
Box "R," Capitol Station
Austin, Texas 78711

FILED

DEC 13 1966

WM. B. LUCK, CLERK

SUBJECT INDEX

	Page
TABLE OF CASES AND OTHER AUTHORITIES -----	iv
I. FACTS UPON WHICH JURISDIC- TION AND VENUE ARE BASED-----	1
II. STATEMENT OF THE CASE AND OF THE BASIC POSITION OF THIS PETITIONER -----	2
III. SPECIFICATION OF POINTS OF ERROR -----	8
1. An inadequacy and unreliability of supply of foreign natural gas upon which PGT would depend are apparent from the rec- ord and have been ignored by the Commis- sion. -----	8
2. The uncertainty of future prices of im- ported Canadian gas sought by PGT, re- sulting from uncontrollable factors with- out the boundaries and jurisdiction of the United States and by contracts with price escalation clauses, was largely disregarded by the Commission in reaching its opinion. -----	8
3. <i>The Commission arrived at its opinion and related orders without sufficient re- gard to or full consideration of a pres- ently available, more economic and desir- able, alternate supply of natural gas pro- duced in Texas and moreover erroneously</i>	

SUBJECT INDEX—Continued

	Page
<i>refused to even admit into the record relevant and material evidence reflecting the existence of such a supply of natural gas.</i>	8
4. The opinion of the Commission was shaped throughout by unjustified emphasis on the original authorization of the subject project, which was unfortunately never opposed by any party intervenor whatsoever and therefore never under the scrutiny of any opposing party in the proceeding. -----	8
5. The Commission failed to consider the undesirable effect upon the domestic economy and upon the development of the natural gas industry, which will result from approval of the subject application.	8
IV. ARGUMENT -----	9
1. The supply of the foreign natural gas, upon which PGT would depend, is inadequate and unreliable. -----	9
2. Future prices of imported natural gas, upon which PGT would depend, are uncertain because of factors without the boundaries and the jurisdiction of the United States, over which neither PGT nor the United States Government has control. -----	14
3. The Commission arrived at its opinion	

SUBJECT INDEX—Continued

	Page
and related orders without sufficient regard to or full consideration of a presently available, more economic and desirable, alternate supply of natural gas in Texas and moreover, erroneously refused to even admit into the record relevant and material evidence reflecting the existence of such a supply of natural gas. -----	17
4. The opinion of the Commission was shaped throughout by unjustified emphasis on the original authorization of the subject project, which was unfortunately never opposed by any party intervenor whatsoever and therefore never under the scrutiny of any opposing party in the proceeding. -----	34
5. The Commission failed to consider the undesirable effect upon the domestic economy and the development of the natural gas industry, which will result from approval of the subject application. -----	37
V. CONCLUSION -----	39

TABLE OF CASES AND OTHER AUTHORITIES

Cases	
JUDICIAL	Page
Atlantic Refining Co., et al v. Public Service Commission of State of New York, et al, 360 U.S. 378, 79 S.Ct. 1246, 3 L.Ed. 1312 (6-22-59) -----	22
City of Pittsburg v. Federal Power Com- mission, 237 F.2d 741 (Cir.Ct.App., D.C., 1956) -----	24, 25
Federal Power Commission v. Hope Nat- ural Gas Company, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333 (1944)-----	21, 26
Jordan, Superintendent of Insurance v. American Eagle Fire Insurance Co., et al, 169 F.2d 281 (Cir.Ct.App., D.C., 4-12-48)	32
Michigan Consolidated Gas Company v. Federal Power Commission, 283 F.2d 204 (Cir.Ct.App., D.C., 4-29-60, reh. den. 7-11-60, cert. den. 364 U.S. 913, 1960)---	26
Mueller and Co., et al v. F.T.C., 142 F.2d 511 (Cir.Ct.App., Sixth Cir., 4-13-44)-----	32
Scenic Hudson Preservation Conference, et al v. Federal Power Commission, 534 F.2d 608 (Cir.Ct.App., Second Cir., 1965)	25, 29
Superior Oil Company v. Federal Power Commission, 334 F.2d 1002 (Cir.Ct.App., Third Cir., 7-30-64) -----	33

TABLE OF CASES AND OTHER AUTHORITIES—Continued

ADMINISTRATIVE	Page
Matter of El Paso Natural Gas Company (Rock Springs Case), 30 FPC 77 (7-12- 63) -----	24, 27
Matter of El Paso Natural Gas Company, Nos. G-8932 and CP66-315, before the Federal Power Commission -----	19, 27
Matter of Great Lakes Gas Transmission Company, et al, Nos. CP66-110, et al, be- fore the Federal Power Commission ----	11
Matter of Gulf Pacific Pipeline Co. et al, Nos. CP63-223, et al, before the Federal Power Commission -----	23
Matter of Pacific Gas Transmission Com- pany, 24 FPC 134 (8-5-60) -----	3, 8, 34
Statutory and Regulatory Provisions	
Federal Administrative Procedure Act, 5 U.S.C. Sec. 1001, et seq; 5 U.S.C.A. Sec. 1001, et seq. -----	30
Federal Administrative Procedure Act, 5 U.S.C. Sec. 1004 (b); 5 U.S.C.A. Sec. 1004(b) -----	30
Federal Administrative Procedure Act, 5 U.S.C. Sec. 1005(c); 5 U.S.C.A. Sec. 1005(c) -----	30

TABLE OF CASES AND OTHER AUTHORITIES—Continued

	Page
Natural Gas Act, Section 3; 15 U.S.C. Sec. 717b; 15 U.S.C.A. Sec. 717b-----	1
Natural Gas Act, Section 4; 15 U.S.C. Sec. 717c; 15 U.S.C.A., Sec. 717c-----	22
Natural Gas Act, Section 7; 15 U.S.C. Sec. 717f; 15 U.S.C.A. Sec. 717f -----	1
Natural Gas Act, Section 7(e); 15 U.S.C. Sec. 717f(e); 15 U.S.C.A. Sec. 717f(e)--	22
Natural Gas Act, Section 19(a) 15 U.S.C. Sec. 717r(a); 15 U.S.C.A. Sec. 717r(a)--	2
Natural Gas Act, Section 19(b) 15 U.S.C. Sec. 717r(b); 15 U.S.C.A. Sec. 717r(b)--	2
Executive Order No. 10485, dated 9-3-63—	1

Constitutional Provisions

U.S.C.A. Const. Amend. 5 -----	30
--------------------------------	----

In the
UNITED STATES COURT OF APPEALS
for the Ninth Circuit

No. 21313

**Brief of Petitioner, the State of Texas
In Opposition to Federal Power Commission
Opinion No. 495
(And All Accompanying and Prior Orders
And Opinions Herein)**

THE STATE OF TEXAS,
v. *Petitioner*
FEDERAL POWER COMMISSION,
Respondent

I.

**FACTS UPON WHICH JURISDICTION AND
VENUE ARE BASED**

The captioned Opinion and orders upon which review are now sought are final orders under Sections 3 and 7 of the Natural Gas Act and under Executive Order No. 10485, dated September 3, 1963, by the Federal Power Commission, a duly constituted agency of the United States of America, having its principal offices at 411 "G" Street, N.W., Washington, D. C.

Petitioner, a party to the proceeding below in Docket Nos. CP 65-213, 214, 215 and dockets consolidated therewith, is aggrieved by the Commission Opinion and orders issued therein on December 17, 1965 and June 15 and August 4, 1966 in that such Opinion and orders are unlawful under and violative of the Natural Gas Act, the Administrative Procedure Act of

1946 and the Constitution of the United States. Petitioner filed a timely application for rehearing in accordance with the requirements of Section 19(a) of the Natural Gas Act which was denied by Commission action on August 4, 1966 under Section 19(a). This petition is filed within the time permitted and under procedures established by Section 19(b) of the Natural Gas Act. Jurisdiction, therefore, is in this Court under Section 19(b) of the Natural Gas Act.

This Court has jurisdiction of this appeal by virtue of Section 19(b) of the Natural Gas Act since Pacific Gas Transmission Company (PGT), a corporation organized and existing under the laws of the State of California, is "located" and has its principal place of business" in San Francisco and therefore within the territorial boundaries of the Ninth Judicial Circuit of the United States, PGT being the natural gas company to which the subject Opinion and orders under attack relate, and thus venue also is in this Court.

II.

STATEMENT OF THE CASE AND OF THE BASIC POSITION OF THIS PETITIONER

The State of Texas initially intervened in the captioned matter on or about February 12, 1965 for the purposes (1) of opposing the plan and application of PGT to import from Canada some 200,000,000 cubic feet of natural gas per day for delivery principally to the San Francisco Bay area and, to some extent, other parts of northern California, the result of which will create an undependable, unnecessary and inadvisable supply of imported gas in the area of northern California to the detriment of domestic producers, the na-

tional economy, California consumers, and the public in general, and (2) of suggesting for consideration herein a more desirable source of gas supply which presently exists as an alternative to the supply sought by PGT.

Originally, on August 5, 1960, the Federal Power Commission (Commission), after a hearing¹ in which any interested parties failed to intervene for the purposes of either offering opposition or presenting alternate proposals, authorized PGT to construct and operate a 614 mile section of a 1400 mile line of 36" pipe extending from the Canadian-United States border near Kingsgate, British Columbia to the Oregon-California border for the purpose of importing from Canada for sale to Pacific Gas & Electric Company (PG&E) a daily contract quantity of 415,000,000 cubic feet and a maximum daily demand of 454,000,000 cubic feet of natural gas, which construction amounted to \$116,940.00 (R: 2879).

By its application in the captioned matter filed with the Commission on January 12, 1965 (R: 3115-4236) and amended on March 1, 1965 (R: 4280-4335), PGT undertook to obtain additional authorization to install, construct, and utilize certain additional facilities necessary for the unprecedented importation from Canada of said 200,000,000 cubic feet of natural gas per day in the following manner: 100,000,000 cubic feet per day commencing November 1, 1966 and 100,000,000 cubic feet commencing November 1, 1967. The cost of such construction, as estimated by PGT, is \$13,857,000.00 (R: 2393-2408).

¹In the Matter of Pacific Gas Transmission Company, 24 FPC 134, August 5, 1960.

The aforementioned authorization sought herein by PGT was granted by the Commission in Opinion No. 495 dated June 15, 1966 (R: 5254-5263) (Appendix: 2-15), which affirmed the Presiding Examiner's Initial Decision (R: 4902-4929) (Appendix: 16-53) reached in disregard of the recommendations of the Commission's Staff to attach conditions (1) requiring the renegotiation of certain prices to be collected for gas by Canadian producers in order to protect the American consumers from price escalations and (2) requiring that any future supplies of natural gas for the PG&E market come from domestic sources so that a healthy balance may be maintained between foreign and domestic sources of natural gas supply and in further disregard of evidence in the record reflecting the availability of a more economic and desirable source of gas supply than the one proposed by PGT (R: 1219-1222).

More important, both the Presiding Examiner and the Commission refused to permit the State of Texas, as discussed in detail below, to present available evidence of a relevant and material nature showing in full and sufficient detail the existence of an alternate source of natural gas for consideration in connection with the application of PGT. Such evidence has never been allowed; and it is not now in the record, notwithstanding the continued insistence of the State of Texas that a lack of consideration of such evidence opens the door to an erroneous decision, which the State of Texas respectfully submits was herein reached simply because this record has never been and is not now complete.

The pre-hearing conference below was held on July 22, 1965; and formal hearing was commenced on September 15, 1965. During the course of the hearing, the

State of Texas undertook to offer prepared testimony of the witness, Bob R. Harris, and of the witness, Barry Hunsaker, together with certain exhibits, and to cause a subpoena duces tecum to issue requiring the presence of said witness, Barry Hunsaker, with certain documents and information therein called for (R: 4503-4513) (Appendix: 54-57), all of which would evidence the availability of an alternate supply of natural gas more desirable and economic than the supply proposed by Applicant; however, rulings by the Presiding Examiner excluded such evidence (R: 135-136, 139-140, 816-817) and refused the issuance of said subpoena duces tecum (R: 427-429, 816-817).

Since said Barry Hunsaker was at all times material hereto and is presently an employee of El Paso Natural Gas Company and never under control of or subject to command by the State of Texas, and since there was never any indication that said Barry Hunsaker would voluntarily appear, his presence as a witness herein could *only* have been obtained by the State of Texas through the subpoena process, which process was denied this State by the Presiding Examiner and by the Commission itself.

The testimony of this particular witness, Barry Hunsaker, for the purpose of developing the record to reflect the existence of a more desirable and economic supply of available gas than the supply proposed by PGT for consideration as an alternate source, is uniquely material and absolutely essential, as more fully stated hereinbelow.

Such evidence could not and cannot be obtained in any other manner. Without such evidence the record remains wanting and distorted.

Next, the State of Texas sought reversal of the aforementioned rulings of the Presiding Examiner by a motion directed to the Federal Power Commission under the Commission's Rules of Practice and Procedure (R: 4631-4637) (Appendix: 58-76) to "Reverse the Ruling of the Presiding Examiner and for Issuance of a Subpoena Duces Tecum," which motion, although filed by the Secretary of the Commission and made a part of the files (Appendix: 86), was after a considerable lapse of time, "rejected" by the Secretary without Commission consideration and summarily returned by the Secretary to the State of Texas (R: 4736 (Appendix: 77-78)).

Thereupon, the State of Texas applied again to the Commission, in accordance with the Commission's Rules of Practice and Procedure for "Reconsideration and for Waiver of the Commission's Rules if Necessary and Request for Commission Determination of the Question of Extraordinary Circumstances" (R: 4743-4749) (Appendix: 79-106, 107-108), which application provoked an order from the Commission dated December 17, 1965 denying reconsideration (R: 4890-4893) (Appendix 109-114), although the order itself recites as follows:

"Texas alleged that it could show through the presentation of this witness (Hunsaker) that there is an alternative method of supplying gas to California at a firm price and a cheaper price than the gas sought to be imported into California under the pending application" (R: 4891) (Appendix: 110).

Therefore, in spite of all legally available measures taken by the State of Texas to include its aforemen-

tioned relevant and material evidence in the record, this State was relegated to the use of what the Commission's Rules of Practice and Procedure refers to somewhat descriptively as an "Offer of Proof"—a tender which is hardly more than an "offer," since, because of its limited nature and incomplete coverage of what might have been relevant and material evidence, it is impossible for the Commission to fully consider its significance (R: 1567-1570). No meaningful evidence is likely to be "tendered" through the means of an "Offer of Proof" because of a total lack of the availability of cross-examination through such procedure.

Exceptions were duly filed by the State of Texas to the Opinion of the Presiding Examiner in the form of a brief as required by the Commission's Rules of Practice and Procedure (R: 4967-4973); and Opinion No. 495 (with accompanying orders) (R: 5254-5263) was issued by the Commission on June 15, 1966 affirming the Presiding Examiner in all particulars, including his rulings excluding the aforementioned evidence of the State of Texas and denying the issuance of the aforesaid subpoena duces tecum, and coincidentally stating in part that "the record in this case does not demonstrate that alternative methods exist for providing the needed volumes of additional gas at rates and under conditions more advantageous than those which will be achieved by certification of PGT's instant application" (R: 5259).

Subsequently, the State of Texas filed an Application for Rehearing (R:5264-5277); and the Commission Order denying application for rehearing issued on August 4, 1966 (R: 5315-5316) (Appendix: 115-117).

III.

SPECIFICATION OF POINTS OF ERROR

1. An inadequacy and unreliability of supply of foreign natural gas upon which PGT would depend are apparent from the record and have been ignored by the Commission.

2. The uncertainty of future prices of imported Canadian gas sought by PGT, resulting from uncontrollable factors without the boundaries and jurisdiction of the United States and by contracts with price escalation clauses, was largely disregarded by the Commission in reaching its Opinion.

3. *The Commission arrived at its Opinion and related orders without sufficient regard to or full consideration of a presently available, more economic and desirable, alternate supply of natural gas produced in Texas and moreover erroneously refused to even admit into the record relevant and material evidence reflecting the existence of such a supply of natural gas.*

4. The Opinion of the Commission was shaped throughout by unjustified emphasis on the original authorization of the subject project,² which was unfortunately never opposed by any party intervenor whatsoever and therefore never under the scrutiny of any opposing party in the proceeding.

5. The Commission failed to consider the undesirable effect upon the domestic economy and upon the development of the natural gas industry, which will result from approval of the subject application.

²In the Matter of Pacific Gas Transmission Company, Supra. Unfortunately never opposed by any party intervenor what-

IV.

ARGUMENT

1. The Supply of Foreign Natural Gas, Upon Which PGT Would Depend, Is Inadequate and Unreliable.

The record evidences a physical insufficiency of natural gas, upon which PGT would depend to meet its obligations under its application in this matter before the Commission.

One of PGT's own witnesses, J. Milton Wege, stated upon cross-examination that about the same number of wells as are presently in existence will have to be drilled in some of the Canadian fields in order to produce the deliverability required to secure sufficient gas for the expansion proposed herein by PGT over the next fifteen to twenty years (R: 198-200); and furthermore the evidence reflects that for the entire projects some 153 additional wells will have to be drilled during such time (R: 317).

In addition, no showing herein has ever been made by PGT of the maximum availability or deliverability of the proposed Canadian gas; and, in fact, the aforementioned witness for PGT, in spite of his verbal assurances, stated that he had made no such computation (R: 206).

With reference to the foregoing lack of evidence, PGT has merely undertaken to show that the average daily requirement necessary to meet the supply demands under the application proposed herein before the Commission is 681,900 Mcf. The indicated peaking requirements, over and above the average daily requirements, have been completely ignored (R: 210-212), and

concrete evidence reflecting the ability to meet such peaking requirements has never been made a part of the record. Yet, the contracts of PGT submitted with its application before the Commission provide for daily peak obligations of 110 percent to 120 percent, which obligations have been apparently overlooked in connection with PGT's deliverability study (R: 217-218).

An equally important consideration concerning the source of gas proposed by PGT is the political control of such gas by the Canadian government. The gas is under Canadian jurisdiction, and, as such, may be diverted by the Canadian government at any time in the event of Canadian national emergency or for the purpose of serving Canadian national interests. If such a development were to occur, neither PGT nor any of its associated companies nor the people of the San Francisco Bay area or of Northern California in general would have any recourse whatsoever. Such an intrinsic peril always exists with imported gas, and Canada's national interests do not and will not always necessarily coincide with those of the United States. When any densely populated community within the United States increases its proportionate dependence on foreign natural gas, which is subject to another government's police powers and laws, or when such increased dependence on foreign gas is thrust upon one of our densely populated areas, the potential danger of having such foreign gas supply cut off from that area or community at any time becomes increasingly important and far-reaching. The present uncertainty of supply may change to a certain shortage of natural gas beyond the ability of any domestic corporation, including PGT, to control, and the area or community depending upon

such foreign gas will suffer to the extent of the shortage (R: 1586-1587).

The possibility of action involving the natural gas industry on the part of the Canadian government in furtherance of the Canadian national interests and in complete disregard for repercussions from such action within the United States became a reality when the Canadian Prime Minister refused to approve proposed applications by Great Lakes Transmission Company, et al and Northern Natural Gas Company to construct certain pipelines and facilities through the United States to move Canadian natural gas into or through the United States and to supply eastern Canadian consumers with such gas or a like amount of gas from domestic sources,³ although at a later date such decision was retracted in accordance with apparent advices.

By reaching the decision to refuse the aforesaid projects, the Prime Minister reversed the Canadian National Energy Board and in effect rendered moot hearings before the Federal Power Commission, which, subsequent to the decision of the Canadian National Energy Board, had been fully completed and had been based on months of legal, engineering, and public relations work within the United States. In reaching the decision to refuse the aforesaid projects, the Prime Minister overtly stated that he was protecting "Canadian interests."

As a result of the aforesaid actions of the Canadian National Energy Board and the Canadian Prime Min-

³In the Matter of Great Lakes Gas Transmission Company, et al, Docket Nos. CP66-110 et al, before the Federal Power Commission.

ister, interested parties may well wonder if the final decision of the Canadian government concerning such matters has in fact been reached, and any prudent party may well have reservations concerning the expenditure of substantial funds for additional pipeline facilities based thereon.

The State of Texas submits that importation of gas from Canada will be judged in the same light by the Canadian Prime Minister and certain segments of the Canadian government, and Canadian gas will be made available only under terms that best serve the interests of Canada and only so long as the best interests of Canada are served.

Arguments herein made by the State of Texas are not under any circumstances to be regarded as questioning the friendly relationship existing between Canada and the United States of America. This State merely submits that a supply of natural gas emanating from a source under foreign jurisdiction is inevitably subject to the necessities and future requirements of such foreign country as determined by its government. Therefore, a supply of gas is more reliable and certain if its source is located within an area that is generally under the consumer's political control and certainly not under the control of a government in which the chief of state has already overruled the agency responsible for natural gas regulation and thereby raised the questions of whether such agency has ceased to be a decision making body and whether there will be any continuity of such agency's policies and rules of procedure.

The Commission failed and refused to even consider the inadequacy and unreliability of PGT's foreign gas

supply, as evidenced by the following portion of the Commission opinion, to-wit:

“The arguments that have been made as to the inadequacy of the Canadian gas supplies, while they would be relevant to a determination of whether a new pipeline should be built, are not appropriate where existing pipeline facilities will be utilized to make delivery of the gas.” (R: 5259) Appendix 7).

From the foregoing language in the opinion, the Commission appears to consider the question of inadequacy of supply irrelevant to a proceeding involving the importation of *any* amounts of natural gas through *existing facilities*.

The State of Texas submits that the questions of inadequacy and unreliability of supply of foreign natural gas are as important in proceedings involving existing pipelines as they are in proceedings involving proposed pipelines. New facilities must be built in either situation. The dangers and imponderables of an inadequate and/or unreliable foreign source of natural gas are present whether gas is imported through a new line or an old line with added facilities; and such dangers and imponderables are just as easily felt by a vulnerable consumer of natural gas whether the gas is to be transported through proposed or existing pipe.

The State of Texas submits that the questions of inadequacy and unreliability of imported gas are most important in any proceeding before the Commission and are indeed relevant and material at all times.

2. Future Prices of Imported Natural Gas Upon Which PGT Would Depend Are Uncertain Because of Factors Without the Boundaries and the Jurisdiction of the United States, Over Which Neither PGT nor the United States Government has Control.

The uncertainty of future prices of the Canadian natural gas proposed for importation by PGT is abundantly evident in the record.

In the first place, there is no evidence in these proceedings of the cost of installations required in Canada under the proposal of PGT, nor is there any evidence in the record with respect to delivery costs north of the Canadian border. An apparent conclusion was reached by PGT that a presentation before the Commission of engineering data north of the United States-Canadian border would be "irrelevant and immaterial (R: 285-290), notwithstanding the established precedent of placing such evidence of complete facilities in the record so that a decision can be based on the entire proposed project without a considerable void in the presentation. The consideration of PGT's proposal without the aforementioned evidence is by nature blind to the extent of the failure of PGT to include such evidence and, the State of Texas submits, has resulted in an improper decision provoked by an incomplete record.

With reference to the evidence actually presented, a price uncertainty of the Canadian gas sought by PGT admittedly exists. The record reflects that the vast majority of the gas contracts proposed before the Commission by PGT contain a renegotiation provision for

the price of gas as early as 1968, and at periodic intervals thereafter (R: 442-444). Such a provision, if not indicative of a price increase, is certainly permissive of one.

At least 86 percent of the gas purchase contracts, upon which PGT relies for its supply, will be renegotiated in 1968, and in addition, a periodic escalation of .25 cents per Mcf is called for by the contracts (R: 468-472). Price escalation clauses cover about 46 percent of the gas involved (R: 468-472).

Based on the record in these proceedings, probable price increases under PGT's gas purchase contracts and periodic escalations of price all but do away with any certainty of price of Canadian gas (R: 1546-1547). Furthermore, based on PGT's "postage Stamp" policy and its weighted average contract price clause, a material increase in price of all the imported gas upon which PGT expects to depend is possible (R: 470-471) if not probable.

A double standard will emerge for pricing of gas sold in the United States if the Commission order granting PGT's application is permitted to stand. While the price of domestic gas is firmly set by governmental control and supervision, the price of Canadian gas imported into this country is free to fluctuate and thereby increase in accordance with various renegotiated provisions and weighted average clauses of gas purchase contracts and under so-called "postage stamp" policies.

The Commission's staff has repeatedly pointed out that Canadian gas is not subject to the same controls that are applied in the United States; and in this pro-

ceeding the Commission's staff urged the Commission to attach a condition to its order requiring renegotiation of prices to be collected for gas by Canadian producers in order to protect the American consumers from price escalation, as reflected on pages 29-33 of the Brief of Commission Staff filed herein on November 15, 1965.

The Commission, after recognizing the Commission staff's position that the certificates should be "conditioned to require that Canadian producers supplying the gas to Canadian pipelines for transportation on a cost-of-service basis to PGT should submit to renegotiation of their contracts to eliminate price escalation provisions (based on weighted average field prices) for protection against possible price increases which would increase the cost of gas to PGT and, ultimately, the American consumer" (R: 5260) (Appendix 10), stated in its order that "such condition was not imposed when the present pipeline facilities were authorized" (R: 5260) (Appendix: 10) and that, since a smaller percentage of contracts now contain such admittedly noxious provisions, the Commission Staff's suggested condition should not be included in the Commission order (R: 5261) (Appendix: 11).

The State of Texas submits that if a provision in a gas purchase contract is detrimental to the consumer, it will still be detrimental to the consumer whether such a gas purchase contract covers 98 percent or 46 percent—or any substantial percentage—of the gas reserves upon which the consumer is forced to depend.

Finally, the Commission, in order to apparently strengthen its order, states, "To require renegotiation of the producer's contracts, which we cannot directly

control, might result in delay in obtaining the desired supplies of gas'' (R: 5261) (Appendix: 11). The State of Texas merely states that, on the other hand, such a requirement might not result in delay; and, if it should, the small inconvenience, if any, of such delay would be far outweighed by the future and widespread advantages of low and certain gas prices available to a major United States market.

It follows that the uncontrolled price movement afforded foreign gas within an otherwise firmly regulated domestic gas industry is conducive to and, in all probability, will result in price increases of all imported gas, which will ultimately and inevitably reach the captive consumers thereof.

3. The Commission Arrived at its Opinion and Related Orders without Sufficient Regard to or Full Consideration of a Presently Available, More Economic and Desirable, Alternate Supply of Natural Gas Produced in Texas and Moreover, Erroneously Refused to Even Admit into the Record Relevant and Material Evidence Reflecting the Existence of Such a Supply of Natural Gas.

The State of Texas has unsuccessfully undertaken to propose for consideration, in connection with PGT's application before the Commission, an existing alternate and more desirable supply of natural gas for use by the Northern California market.

The State of Texas has been unsuccessful in such endeavor because both the Presiding Examiner and the Federal Power Commission have refused to permit the presentation of such evidence by this State (R: 136, 140; R: 4890-4893).

The evidence, which the State of Texas desires to present and has continually attempted to place in the record, would show an alternate and more desirable supply of gas from Texas (where there are presently over 700 shut-in gas wells) available to PG&E (through existing facilities of El Paso Natural Gas Company) in a sufficient volume to fulfill PG&E's requirements for gas sought to be supplied by PGT from Canadian sources and at a lower border price at the California border than the price of Canadian gas sought under the application by PGT. Such is the nature of the existing alternate supply of natural gas proposed by the State of Texas for consideration throughout these proceedings, the evidence of which has been arbitrarily excluded from the record by the Commission, notwithstanding the attempted tenders of such evidence at every available juncture and in every legal manner by this State (R: 136, 140, 427-429, 810-812, 816-817, 4631-4636, 4733, 4736, 4739, 4743-4767, 4890-4893, 4964-4966, 4978-4995, 5270-5279).

Notwithstanding such continuous urging and numerous legal methods employed by the State of Texas throughout the hearing of this matter before the Presiding Examiner and within the framework of the Commission's Rules of Practice and Procedure to incorporate its evidence into the record, the Presiding Examiner, before whom this matter was originally heard, subsequently referred to such attempts on the part of this State as "half-hearted" in the following manner:

"Some of you may recall that there were half-hearted alternate proposals submitted to the Examiner in the Pacific Gas Transmission import case, but they didn't do anything except to say there were shut-in wells in Texas. I think people

in the industry know pretty well why wells are shut in and not attached to the pipeline, so the Examiner didn't admit that."

And the Commission itself concluded in its opinion, after upholding the Presiding Examiner's exclusion of evidence proposed by this State, that "the record in this case does not demonstrate that alternate methods exist for providing the needed volumes of additional gas at rates and under conditions more advantageous than those which will be achieved by certification of PGT's instant application" (R: 5259) (Appendix 8).

The State of Texas wholeheartedly agrees with the foregoing statement of the Commission; however, the State of Texas must readily add that the record would have reflected *for the Commission* the existence of a more desirable alternate method "for providing the needed volumes of additional gas at rates and under conditions more advantageous than those which will be achieved by certification of PGT's instant application" *if* the State of Texas had been permitted to introduce its said proposed evidence into the record—*if* the record had been permitted to be completed so as to include *all* relevant and material evidence—all of which the Presiding Examiner and the Commission itself failed and refused to allow.

The State of Texas respectfully calls the Court's attention not only to the prepared testimony of its proposed witnesses, Bob R. Harris and Barry Hunsaker, together with certain exhibits offered in connection

³In the Matter of El Paso Natural Gas Company, Docket Nos. G-8932 and CP66-315, Before the Federal Power Commission: Vol. No. 13, Page 1862 of the transcript.

therewith (R: 2906-2907, 2915-2919, 2920-2927, 2927A, 2928-2933, 2934-3036), but also to the prepared testimony of Arlen Edgar offered by Permian Basin Petroleum Association, et al (R: 2896-2904), and the prepared testimony of F. X. Jordan with accompanying exhibits offered by Independent Petroleum Association of America (R: 3037-3039), all of which testimony bears directly upon either the presence of an alternate supply of gas more desirable than the supply proposed by PGT or upon the relative undesirability of the foreign gas proposed by PGT, and none of which testimony has ever been permitted to be in the record as evidence but merely as offers of proof, although as relevant and material as any evidence presently included in the record.

In advocating an available gas supply in the United States as a more desirable source than foreign gas, it should first be remembered that natural gas in this country is not subject to any political control by or change of policy within any foreign government, as is the imported gas sought under PGT's application herein before the Commission. Such a fact in itself weighs heavily in favor of domestic supply for one of this country's major metropolitan areas.

Other noticeable advantages of available gas produced in Texas contrast sharply with the unreliability of supply and uncertainty of price of the foreign gas sought for importation by PGT.

Where the price of the proposed Canadian gas is uncertain as aforesaid, the price of available natural gas produced in Texas and moving in interstate commerce is regulated by the Federal Power Commission

in such a manner that its price is firm and definite in each field or area, which is particularly true of the price of gas produced in the Permian Basin area of Texas and New Mexico for supply to the West Coast market (R: 1548). *The testimony of PGT's own witness herein reflects that the incremental price of such available "Texas" gas at the California border (Topock) is approximately 22¢ per Mcf, which is a cheaper price than even the original incremental price of PGT's proposed imported gas at the California border* (R: 1219-1222). With reference to a showing of the lowest price for available, desirable gas, the Supreme Court of the United States held as follows:

"The purpose of the Natural Gas Act was to underwrite just and reasonable rates to the consumers of natural gas (citing Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 64 S.Ct. 281, 88 L.Ed. 333, 1944). As the original Section 7(c) provided, it was 'the intention of Congress that natural gas shall be sold in interstate commerce for resale for ultimate public consumption for domestic, commercial, industrial, or any other use at the *lowest possible reasonable rate* consistent with the maintenance of adequate service in the public interest.' (52 Stat. 825⁵) The Act was so framed as to afford consumers a complete, permanent and effective bond of protection from excessive rates and charges. The heart of the Act is found in those provisions requiring initially that any 'proposed service, sale, operation, construction, extension or acquisition . . . will be required

⁵The 1942 amendments to Section 7, 56 Stat. 83, were not intended to change this declaration of purpose. See hearings, House Interstate and Foreign Commerce Committee, on H. R. 5249, 77th Congress, First Session 18-19; H.R. Rep. No. 1290, 77th Cong., First Sess.; S.Rep. No. 948, 77th Cong., Second Sess.

by the present or future public convenience and necessity,' (Sec. 7(e), 15 U.S.C. Sec. 717f(e)), 15 U.S.C.A. Sec. 717f(e) and that all rates and charges 'made, demanded or received' shall be 'just and reasonable,' (Sec. 4, 15 U.S.C. Sec. 717c, 15 U.S.C.A. Sec. 717c)." (Emphasis added) Atlantic Refining Co., et al. v. Public Service Commission of State of New York, et al., 360 U.S. 378, 79 S.Ct. 1246, 3 L.Ed.2d 1312 (6/22/59).

Where the supply of the proposed Canadian gas is unreliable as aforesaid, the supply through El Paso Natural Gas Company lines of gas produced in Texas is available and reliable, consideration of which supply by the Presiding Examiner and the Commission has been consistently sought by the State of Texas as mentioned hereinabove, although evidence of such alternate supply has been disallowed in these proceedings, excluded from the record, and relegated to what the Commission's Rules of Practice and Procedure refers to as an "Offer of Proof"—a wholly unsatisfactory procedure limited by its nature to inadequate written evidence, under which no oral examination, *including cross-examination*, can be made and no documents can be produced for consideration through the use of the subpoena process (R: 1567-1579).

PGT has objected throughout the hearing to any consideration of an alternate supply of gas from Texas because no competitive application has been filed by El Paso Natural Gas Company, through the lines of which such Texas gas would have to be supplied to the California market; however, although counsel for El Paso Natural Gas Company has indicated that the company may have had no "excess capacity" in its lines without adding additional facilities at a certain

time, by virtue of which it could make deliveries, El Paso Natural Gas Company did intervene as a party in this proceeding and has maintained a completely neutral position herein and has never objected in any manner to the possibility of carrying additional gas to the California market. The relatively minor cost of additional facilities to the existing lines of El Paso Natural Gas Company has never been set forth in this record. Furthermore, the term "excess capacity," has never been defined in this hearing, and no determination has been made herein as to the context in which the term was used.

Moreover, in the original application in the Gulf Pacific case,⁶ El Paso Natural Gas Company showed therein that it could deliver an additional 250,000 Mcf per day to the California border by reinforcing its existing facilities from Texas and, in a first amended application, alternatively showed therein that it could deliver 575,000 Mcf per day to the California border via a proposed new pipeline from New Mexico (known as the "Chaco-Needles Line"), as well as the aforementioned 250,000 Mcf per day by reinforcement of existing facilities (R: 426-427). Furthermore, Mr. Barry Hunsaker, then Chief Pipeline Engineer for El Paso Natural Gas Company, testified that, at the request of the Southern California Distributor Companies, he had prepared exhibits demonstrating another alternative, by virtue of which El Paso Natural Gas Company could deliver to the California border 250,000 Mcf per day heretofore mentioned plus an additional 325,000 Mcf per day making a total of 575,000

⁶Matters of Gulf Pacific Pipeline Co., et al, Docket Nos. CP63-223, et al, before the Federal Power Commission.

Mcf per day merely by reinforcing its existing pipelines (without constructing the "Chaco-Needles Line") (R: 413-415). Since El Paso Natural Gas Company did not make application to deliver this additional 325,000 Mcf per day through its existing pipelines, this alternative is as available for consideration by the Commission today as it was when the said testimony and exhibits of Mr. Barry Hunsaker were prepared, notwithstanding the final or any decision in the Gulf Pacific case (R: 427). Said testimony and exhibits of Mr. Barry Hunsaker were never sought to be used in the Gulf Pacific case or in support of any pending application before the Federal Power Commission. Said testimony and exhibits of Mr. Barry Hunsaker were the substance of the evidence tendered in this proceeding by this State and were arbitrarily and capriciously excluded from this record by the Presiding examiner and subsequently by the Commission itself.

Not only are the said testimony and exhibits of Mr. Barry Hunsaker highly relevant and material in the matters here under consideration, but also their admission into the record herein as evidence, as requested by the State of Texas, is in keeping with the holdings in *City of Pittsburgh v. Federal Power Commission*, 237 F.2d 741 (Cir.Ct.App., D.C., 1956) and the "Rock Springs" case (30 F.P.C. 77, 1963), that the Commission should consider *all* alternative means to determine whether a particular proposal would serve the public convenience and necessity, regardless of whether a formal application or competitive application is made with reference to such proposal.

In the above mentioned *City of Pittsburgh case*, the

District of Columbia Circuit Court of Appeals set forth the following rule:

“The existence of a more desirable alternative is one of the factors which enters into a determination of whether a particular proposal would serve the public convenience and necessity. That the Commission has no authority to command the alternative does not mean that it cannot reject the (original) proposal” *City of Pittsburgh v. Federal Power Commission* (Supra).

Furthermore, such a rule has been subsequently followed by the United States Court of Appeals for the Second Circuit, as evidenced by its opinion declaring that a project under consideration by the Commission must be compared with any alternatives that are available and the following statements from such opinion:

“... the Commission has claimed to be the representative of the public interest. This role does not permit it to act as an umpire blandly calling balls and strikes for adversaries appearing before it: the right of the public must receive active and affirmative protection at the hands of the Commission.”

“The Commission must see to it that the record is complete. The Commission has an affirmative duty to inquire into and consider all relevant facts” *Scenic Hudson Preservation Conference, et al. v. Federal Power Commission*, 534 F.2d 608 (Cir.Ct.App., Second Cir., 1965).

Also, the United States Court of Appeals for the District of Columbia has similarly held as follows:

“... since the Commission is charged with the duty of protecting the ultimate consumer from ‘exploitation at the hands of natural gas companies’

(citing Federal Power Commission v. Hope Natural Gas Company, 320 U.S. 591, 64 S.Ct. 281, 88 L.ed. 333, 1944), it cannot refuse *to consider* a proposal which appears, on its face at least, consistent with that duty." Michigan Consolidated Gas Company v. Federal Power Commission, 283 F.2d 204 (Cir.Ct.App., D.C., 4/29/60, reh.den. 7/11/60, cert.den. 364 U.S. 913, 1960).

Moreover, Staff Counsel of the Federal Power Commission has also clearly stated its position (in a direct answer to the same Presiding Examiner herein in a subsequent matter before the Commission) with reference to the consideration by the Commission of *all* reasonable alternatives to the proposals of applicants before the Commission, to wit:

"We are hopeful that alternatives will be presented in this record, whether they are better alternatives or poorer alternatives, simply to give an idea to the Commission whether or not there is a better way to perform the service to the Northwest other than the picking up of this high-cost Canadian gas.

"We are concerned at the price of this gas, and we are concerned at the forthcoming dependence on the Pacific Northwest area on Canadian reserves for their future market development. We are concerned, of course, with all of the questions the Commission has raised. We intend to explore them thoroughly.

"It may be I.P.A.A., TIPRO or Texas or anyone else can come in and show gas is available and there are means to move it up to the Pacific Northwest area, which of itself, and notwithstanding that no certificate application has been submitted, would be a possible alternative which should be explored.

“If your Honor will recall for example in the Rock Springs case of recent infamy, the Commission denied a certificate to El Paso when it was shown on the record through statements of various parties there might be better alternatives, as admitted you remember by the parties themselves subsequently. The fact no certificate was filed in competition with the Rock Springs case at the time wasn’t controlling, nor should it be controlling. This is what I have in mind, the possibility of a more desirable alternative presenting itself.

“This is something I think that must be explored on this record.

“To the extent these alternatives have been explored, your Honor, I would expect they would tell us what alternatives were explored. El Paso has done this to some extent with the first supplement to their original application. They presented alternatives which were explored and which they say are much more expensive than the proposal. Something of this type should be presented so that the Commission has an awareness of what the alternatives might be, so that the consumers in the Pacific Northwest have an awareness of what the alternatives might be, and where they are leading themselves by depending on Canadian gas.

“The dependence upon Canadian gas of itself may not be bad, but we are concerned that the Pacific Northwest consumers might be put into a position that ultimately they will be paying too much for gas that otherwise would have been available to them if they had acted earlier in bringing gas up from other sources. This is something that should be explored, . . .”

Apparently, from the void in the record, to which

¹In the Matter of El Paso Natural Gas Company, *supra*: Vol. 1, Pages 115-118 of the transcript.

the excluded evidence proposed by the State of Texas was intended by this State to fill, the Commission determined that, although supplies of gas are available in the Permian Basin and other areas of the Southwest, "the facilities for bringing this gas to California in the amounts desired by consumers are not now available, nor can they be available for some time" (R: 5260) (Appendix 9). This State says that a different conclusion would have been reached if its proposed evidence had not been excluded from this record.

Evidence has been placed in this record that El Paso Natural Gas Company can furnish desirable natural gas to the Northern California market at a lower California border price than that of the foreign gas proposed by PGT. The State of Texas should be permitted to make a showing *that there is in fact a presently existing, alternate supply of natural gas available to the Northern California market, which is more desirable and may be produced at a lower price than the imported gas herein proposed.* Such a showing of evidence should be permitted in this matter, especially since the testimony proposed by the State of Texas (together with the oral examination in connection therewith) may reflect that El Paso Natural Gas Company can presently supply Northern California with such available gas and is desirous of so serving the Northern California market. As is stated by the Court in the *Hudson River case*:

"If the Commission is properly to discharge its duty . . . ; the record on which it bases its determination must be complete. The petitioners *and the public at large* have the right to demand this completeness." (Emphasis added)

Scenic Hudson Preservation Conference, et al. v. Federal Power Commission, supra.

In the initial decision affirmed in due course by the Commission, the Presiding Examiner undertook to discuss the economic feasibility of the proposed project (R: 1919-1920); however, due to the exclusion of proposed testimony of the State of Texas, the entire picture could not be presented, as no evidence was permitted in the record, upon which an economic comparison could be made with natural gas produced in Texas. Yet, the evidence, as the record presently stands and as mentioned hereinabove, clearly reflects the presence of a lower incremental cost of Texas gas at the California border than the corresponding incremental cost of the proposed foreign gas at the California border; and the State of Texas submits that, if the record had been completed with respect to its proposed testimony, a showing of a lower future price for Texas gas with less expenditure for physical facilities would also be a part of the existing record.

Not only was the State of Texas denied the right by the Presiding Examiner and the Commission to present as a part of the record herein the highly relevant and material prepared testimony of said Bob R. Harris and Barry Hunsaker, but also, because of the refusal of the Presiding Examiner and the Commission to permit the issuance of the aforementioned subpoena duces tecum directed to Barry Hunsaker, the State of Texas was further and cursorily denied its inherent right to due process of law as guaranteed by the Fifth Amendemnt of the United States Con-

stitution⁸ and as provided in the Federal Administrative Procedure Act.⁹

With reference to the right of a party to use of the subpoena process, the Federal Administrative Procedure Act provides:

“Agency subpoenas authorized by law shall be issued to any party upon request and, as may be required by rules of procedure, upon a statement or showing of general relevance and reasonable scope of the evidence sought.” 5 U.S.C.A., Sec. 1005 (c).

Furthermore, with reference to the right of a party to present all pertinent facts to the Commission for consideration, the Federal Administrative Procedure Act provides the following:

“The agency shall afford all interested parties opportunity for (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment where time, the nature of the proceeding, and the public interest permits, . . .” 5 U.S.C.A., Sec. 1004 (b).

The State of Texas was denied the right by the Presiding Examiner and by the Commission to present certain testimony of said Barry Hunsaker, which was prepared but not used in connection with a prior hearing before the Commission, and moreover was denied the right to command his presence at this hearing, with certain documents and information, in order to prove up the aforementioned particular matters concerning the availability of a more desirable, alternate supply of natural gas than the supply proposed by PGT.

⁸U.S.C.A., Const. Amend. 5.

⁹5 U.S.C.A., Sec. 1001, et seq.

This particular witness, Barry Hunsaker, is and has been at all times material hereto an employee of El Paso Natural Gas Company and as such under no duty to appear on behalf of the State of Texas. Never did he voluntarily appear herein during the course of these proceedings, although his presence was requested by this State. The only possible way that the oral testimony of Barry Hunsaker on behalf of the State of Texas could presently be a part of the record would have been for his presence to be ordered by subpoena emanating from the Commission. The only possible way that a showing of the availability of a more desirable, alternate supply of natural gas than the supply proposed by PGT could presently be a part of the record would have been through the oral testimony of Barry Hunsaker, since his proposed written testimony was prepared for a prior hearing and his oral testimony was essential to make a showing in this record that the aforesaid more desirable, alternate supply of natural gas exists today and since said Barry Hunsaker is uniquely qualified to present such testimony because of his particular position with and the specific studies he has made for El Paso Natural Gas Company. Therefore, the refusal on the part of the Presiding Examiner and the Commission to issue a subpoena duces tecum, as requested by the State of Texas, requiring Barry Hunsaker to testify herein was a denial to the State of Texas of due process of law, was unconstitutional and capricious.

The Courts have consistently protected party litigants from such abuses of denial of due process, as evidenced by the following statement appearing in a holding by the District of Columbia Circuit Court of Appeals:

“That the procedural necessities include the revelation of the evidence upon which the disputed order is based, an opportunity to explore that evidence, and a conclusion based upon reason and not merely arbitrary, is soundly established by a long line of cases.” *Jordan, Superintendent of Insurance v. American Eagle Fire Insurance Co., et al.*, 169 F.2d 281 (Cir.Ct.App., D.C., 4-12-48)

Furthermore, a court decision has specifically dealt with a possible denial of due process by refusal to issue a subpoena duces tecum. In that particular case, the Court upheld the Federal Trade Commission’s denial of the issuance of a subpoena duces tecum simply because such subpoena was “too sweeping in its terms to be regarded as reasonable” and because the “petitioners (had already) received all the information to which they were entitled” but the court left no question as to the importance with which it regarded such a possible denial of due process:

“The most serious contentions raised by petitioners are that they were not accorded a full and fair hearing and were denied due process (1) because they were not furnished the particulars of the charge as to discrimination, and (2) *because they were not granted a subpoena duces tecum as prayed.*” (Emphasis added.)

The Court thereupon stated as follows in its opinion:

“The right to a full and fair hearing is one of the substantial rights of a litigant, constituting one of ‘the rudiments of fair play.’ ”

Such a right, the court stated, includes, “the right to present evidence.” *Mueller and Co., et al. v. F.T.C.*, 142 F.2d 511 (Cir.Ct.App., Sixth Cir., 4-13-44).

Again, the right to a full hearing was firmly stated by the Third Circuit Court of Appeals in a case involving the Federal Power Commission itself, in the following manner:

“The parties to a proceeding before an administrative agency such as the Commission are entitled to: first, due notice as to the nature and scope of the contemplated inquiry; second, *an opportunity to be heard and present evidence*; and third, *a full hearing in conformity with the fundamental concepts of fairness. A departure from these minimal requirements is a denial of procedural due process. . . .*” (Emphasis added) *Superior Oil Co. v. Federal Power Commission*, 334 F.2d 1002 (Cir.Ct.App., Third Cir., 7-30-64).

The State of Texas submits that the San Francisco Bay area and all of Northern California will best be served by the presently available natural gas produced in Texas and consequently that the Northern California market should not at this time be subjected to any greater dependence on the less desirable and more costly foreign gas proposed for importation by PGT.

The State of Texas submits that, if its witness had been permitted to testify and to be available for cross-examination, the record in these proceedings would have been supported by overwhelming evidence confirming this State's position as a party herein and substantiating the record established herein that a dependable natural gas supply for the Northern California market is presently available in Texas, which can be transported to the California border through existing facilities and can be sold there at a firm price and a price lower than the price of the relatively unreliable foreign gas proposed for importation by PGT.

4. The Opinion of the Commission was Shaped Throughout by Unjustified Emphasis on the Original Authorization of the Subject Project,¹⁰ which was Unfortunately Never Opposed by any Party Intervenor Whatsoever and Therefore Never Under the Scrutiny of any Opposing Party in the Proceeding.

The first paragraph of the Presiding Examiner's Initial Decision, which was duly affirmed by the Commission, refers to a footnote citing the original authorization of Pacific Gas Transmission Company to construct and operate the basic facilities, which are proposed for use herein, and the following statement appears in such footnote:

“The various regulatory agencies recognized, when they authorized the construction and operation of this 36-inch line, that it was oversized for the throughput of the initially certificated volumes of 415,000 Mcf per day. However, PGT there indicated that future authorizations would be sought to import additional volumes of natural gas to utilize the full capacity of the line” (R: 1903).

Furthermore, in said Initial Decision, the following statement appears:

“In this proceeding the applicant seeks to take advantage of this additional throughput capacity” (R: 1917).

Following the aforesaid comments, the Presiding Examiner observed that the increased volumes of gas will materially decrease the delivered unit price of gas (R: 1917).

¹⁰In the matter of Pacific Gas Transmission Company, *supra*.

In the original proceeding in which authorization for a 36-inch pipeline was granted by the "various regulatory agencies," no objection was made to the oversized pipeline as proposed by PGT, primarily because any interested parties had inadvertently failed to intervene in opposition to such application. Therefore, the adversary system was not at such time evoked, and an airing of all facts—favorable and unfavorable—which opposition at a hearing would elicit, was never fully made. A question exists as to whether such oversized pipeline would have been authorized on August 5, 1960, if the application and plan of PGT therein had in fact been opposed.

Nevertheless, no more can be assumed than that PGT indicated in said hearing "that future authorizations would be sought to import additional volumes of natural gas to utilize the full capacity of the line." Surely, it cannot be assumed that the Federal Power Commission, by granting the original application, thereby concluded that all future applications by PGT regarding additional utilization of such pipeline would be granted at any and all times without question.

The State of Texas says that such assumption was never intended; that this is not the time to permit additional importation of gas into the Northern California area; and that any economic advantage of a presently oversized pipeline in this instance is far outweighed by the disadvantages of (1) inadequacy of supply, (2) uncertainty of price, (3) unnecessary dependence on foreign gas, and (4) relatively high costs when compared with an available, alternate, domestic supply, all of which disadvantages, as discussed here-

inabove, are inherent in the proposal of PGT in the captioned proceedings.

The Commission, in its issuing opinion, stated that it was concerned here with "already existing pipeline facilities which are not yet being utilized to their full-est capacity" (R: 5260), and further stated, "to re-
fuse to issue certificates authorizing the importation, transportation, and sale of this additional gas would mean that some of the capacity of presently existing facilities would remain unused with resultant higher costs to the consumers in four states" (R: 5260). Then the Commission added, ". . . it would seem desirable to allow already existing facilities to be used to bring out whatever gas may be available" (R: 2560). The excluded evidence herein proposed by the State of Texas, as referred to herein, is also concerned with the utilization of existing pipeline facilities, with the consumer costs in connection therewith, and with the desirability of allowing already existing facilities to be used to bring out whatever gas may be available from Texas.

The Federal Power Commission's Staff, after a perusal of the evidence submitted at the original hearing in this matter, recognized the factors of inadequate supply, uncertain price, unnecessary dependence on foreign gas, and relatively high costs of Canadian gas with reference to PGT's application, as reflected by the detailed Staff Brief dated November 15, 1965 previously filed herein, in which Staff discussed the possibility of price increases of gas under the proposed application on pages 33 through 35 thereof, the lower price of gas available through the lines of El Paso Natural Gas Company than the price of foreign gas

proposed by PGT on pages 35 through 39 thereof, and the need for augmenting PG&E's gas supply with gas from domestic sources to the degree necessary for protection of the domestic industry and the domestic gas supply for the United States consumer on pages 45 through 49 thereof.

The State of Texas is also concerned with the foregoing matters and firmly believes such concern is necessarily provoked and indeed made more urgent by the ramifications of granting PGT's application in this case.

5. The Commission Failed to Consider the Undesirable Effect Upon the Domestic Economy and the Development of the Natural Gas Industry, Which Will Result From Approval of the Subject Application.

Since the volumes of imported gas sought from Canada in this proceeding are of such a magnitude, the effect upon the domestic economy and the development of the domestic natural gas industry should be thoroughly determined in connection with any consideration of approval of the subject application. To some extent, the record reflects what may be expected if an additional volume of 200,000 Mcf per day of gas is imported into the Northern California market, as proposed by PGT.

The testimony of Mr. F. X. Jordan, Economic Analyst of the Independent Petroleum Association of America, shows definitely that interstate movements of natural gas into California have been adversely affected by the great amounts of imported gas flowing into California in the last few years. Based upon Mr. Jordan's factual analysis, imported gas from Canada

in such increasingly large volumes has had a demonstrably depressant effect on utilization of domestic gas; and, if such a trend continues in the future, the volumes of imported gas flowing into this country will tend to discourage domestic natural gas exploration and thereby eliminate a dependable and healthy domestic supply (R: 1578-1580).

Mr. Jordan has further pointed out that during the past five years, the marketed production of domestic natural gas has increased 29% while natural gas imports into the United States have increased 230%; and that, where imported natural gas accounted for 2.7% of overall United States supply in 1964, imported gas in District V (California District) during 1964 constituted 13.5% of the total natural gas supply (R: 1583).

As an expert witness, Mr. Jordan has stated that gas imports should be permitted to increase but at a rate no greater than the growth rate of the domestic production of natural gas in order to maintain a healthy and vigorous domestic petroleum industry (R: 1587-158).

The State of Texas submits that the health and vigor of the domestic petroleum industry are most important to the economy of the nation and that granting PGT's application to import the volumes of gas requested in this proceeding into the Northern California area is equivalent to arbitrarily denying the domestic petroleum industry the encouragement toward health and vigor that it could otherwise have and presently needs.

A wider view of economic repercussions, which would stem from the importation of the great volume of gas,

proposed by PGT and approved by the Commission herein, will expose a resulting deterioration in balance of payments and the alarming possibility of a considerable gold flow out of this country. A showing may be made by simple arithmetic that some \$1,000,000. per month would move from the United States to Canada in payment for the imported gas sought herein by PGT. The State of Texas submits that such adverse economic effect should also be considered with reference to the granting of PGT's application in this matter, especially because of the present importance of a favorable balance of trade position.

V.

CONCLUSION

The State of Texas respectfully submits that, based upon the evidence alone in this matter and bolstered by its offers of proof, the public convenience and necessity would not be served by issuance of the requested certificate approved herein by the Commission; the issuance of a Presidential Permit and Order authorizing the requested importation of gas, which the State of Texas feels is a necessary requirement to any approval of the subject application herein, would be inconsistent with and detrimental to the public interest; that therefore the offers of proof made by the State of Texas in this matter and directed to the proposed testimony of Bob R. Harris and Barry Hunsaker, together with designated exhibits, should be admitted as and given the dignity of evidence herein (as should the offers of proof directed to the proposed testimony of Arlen Edgar and F. X. Jordan, together with designated exhibits); the subpoena duces tecum directed to Barry

Hunsaker should be permitted to issue, as consistently urged by the State of Texas; and that this matter should in all things be remanded to the Commission with proper instructions to assure full development of a complete record covering all relevant and material matters prior to a final decision's being reached herein and before the issuance of an opinion and accompanying orders.

The State of Texas respectfully submits that a dependable, alternate method of supplying gas to Northern California at a firm price and a price cheaper than the price of gas to be imported to California under the pending application exists. The Canadian gas, upon which PGT would depend, would be uncertain both as to supply and price, as reflected by the evidence in this hearing. Moreover, if the order granting the subject application is permitted to stand, the importation of the great volume of Canadian gas thereunder would cause irreparable injury to the domestic natural gas industry and result in a drastic curtailment of exploratory efforts therein. Such devastation of a vigorous and important segment of the national economy through artificial and arbitrary action must not be permitted.

The uncertainty of price and of supply of PGT's Canadian gas and the patently adverse effect, which the importation of such gas would have upon the domestic economy, may be clearly contrasted with the dependable and lower priced Texas gas available to the Northern California market, the sale of which would most certainly have a broad and stimulating effect upon the economy of the United States.

The State of Texas, as a party to this hearing, does

not seek false or fabricated advantages over any other party hereto, but rather seeks, by undertaking to present all relevant facts, to continue to oppose the application to import Canadian gas, which has been approved by the Commission, the importation of which, the State of Texas submits and believes, will provide, according to the record herein, a foreign gas supply, the sufficiency of which has not been adequately developed in this hearing, to Northern California, subject to necessary curtailment or withdrawal by the Canadian government at any time and further subject to expected and unexpected periodic price increases, and moreover will provide a foreign gas supply less stable and less desirable than the presently available alternate supply of gas from Texas.

The State of Texas finally submits that an alternate source of natural gas is presently available from Texas to supply the Northern California market through more efficient utilization of existing facilities, which gas is more dependable and lower in price at the California border than the foreign gas proposed by PGT and permitted to be imported by the Commission's subject order, and that when the availability of such gas produced in Texas is fully considered, which the State of Texas has urged as a relevant, material and proper consideration herein, the proposal of PGT will be found inconsistent with and detrimental to the public interest and that therefore its application will be in all things denied.

WHEREFORE, for all of the foregoing reasons, the State of Texas respectfully submits that this Honorable Court should set aside and hold for naught Commission Opinion No. 495 and accompanying orders

and remand this matter to the Commission with appropriate instructions requiring admission of the aforementioned evidence proposed by the State of Texas and excluded by the Commission into the record for consideration and requiring the issuance of a subpoena duce tecum directed to Barry Hunsaker, as urged by the State of Texas, and/or in all things deny the application of PGT herein as being inconsistent with and detrimental to the public interest.

Respectfully submitted,

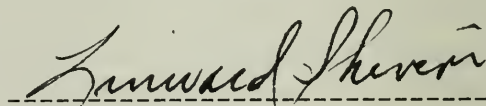
THE STATE OF TEXAS

WAGGONER CARR
Attorney General of Texas

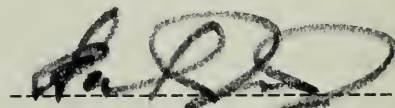
HAWTHORNE PHILLIPS
First Assistant Attorney General

T. B. WRIGHT
Executive Assistant

J. ARTHUR SANDLIN
Assistant Attorney General



LINWARD SHIVERS
Assistant Attorney General

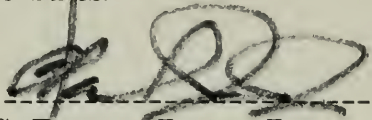


C. DANIEL JONES, JR.
Assistant Attorney General

Box "R," Capitol Station
Austin, Texas 78711

Certification

I certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.



C. DANIEL JONES, JR.

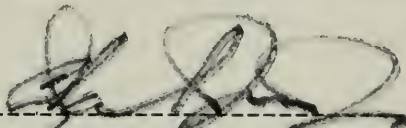
Certificate of Service

I hereby certify that I have this day served the foregoing upon the following party:

Howard E. Wahrenbrock,
Solicitor
441 G Street, N.W.
Washington, D. C. 20426

and all parties to this proceeding.

Dated at Austin, Texas this the 9th day of December, 1966.



C. DANIEL JONES, JR.

APPENDIX

APPENDIX INDEX

	Page
1. Federal Power Commission Opinion No. 495 (dated June 15, 1966)-----	2
2. Presiding Examiner's Initial Decision -----	16
3. Application of the State of Texas for Subpoena Duces Tecum of witness Barry Hunsaker--	54
4. Motion by The State of Texas to Reverse the Ruling of the Presiding Examiner and For Issuance of a Subpoena Duces Tecum (together with all exhibits filed therewith)-----	58
5. "Rejection" letter (of Motion by the State of Texas to Reverse the Ruling of the Presiding Examiner and For Issuance of a Subpoena Duces Tecum) From Commission Secretary--	77
6. Application for Reconsideration and For Waiver of the Commission's Rules, If Necessary, and Request For Commission Determination of the Question of "Extraordinary Circumstances" (together with all exhibits filed therewith) -----	79
7. Transmittal letter with reference to Item "6" hereinabove -----	107
8. Order (by the Commission) Denying Reconsideration, Waiver of the Commission's Rules and Making Determination of the Question of "Extraordinary Circumstances" -----	109
9. Order (of Commission) Denying Application For Rehearing -----	115

IN THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

NO. 21313

STATE OF TEXAS

v.

FEDERAL POWER COMMISSION

APPENDIX OF THE STATE OF TEXAS

**OPINION AND ORDER ISSUING CERTIFICATE
AND AUTHORIZING IMPORTATION OF
NATURAL GAS**

Issued: June 15, 1966

**UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION**

	Docket Nos.
	CP65-213
Pacific Gas Transmission Company	CP65-214
	CP65-215

OPINION NO. 495

APPEARANCES

Raymond N. Shibley, Richard H. Peterson, Malcolm H. Furbush, and John A. Sproul for Pacific Gas Transmission Company

Linward Shivers, Wagner Carr, C. L. Snow, Jr., and C. Daniel Jones, Jr. for the State of Texas

Richard E. Tuttle, J. Calvin Simpson and Sheldon Rosenthal for the People of the State of California and Public Utilities Commission of the State of California

Robert E. Simpson for Washington Utilities and Transportation Commission, Idaho Public Utilities Commission and Public Utility Commission of Oregon

Allan G. Shepard and Larry D. Ripley for Idaho Public Utilities Commission

Henry F. Lippitt, II, for Oil Producers Agency of California, California Gas Producers Association, and Jade Oil & Gas Company

Edward G. Najaiko, C. Grank Reifsnyder and Jeremiah C. Collins for El Paso Natural Gas Company

William I. Powell for Independent Petroleum Association of America

Roger J. Nichols and Eric W. Martens for Southern California Gas Company, Southern Counties Gas Company of California, and Pacific Lighting Gas Supply Company

George J. Meiburger for Washington Natural Gas Company

Robert Laughead for the City and County of San Francisco

John Davenport for Texas Independent Producers & Royalty Owners Association, West Central Texas Oil and Gas Association and Permian Basin Petroleum Association

Robert L. Russell and John J. Keating Jr. for the Staff of the Federal Power Commission

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Lee C. White, Chairman; L. J. O'Connor, Jr., Charles R. Ross, David S. Black, and Carl E. Bagge.

Docket Nos.

Pacific Gas Transmission)	CP65-213, CP65-214,
Company)	CP65-215

OPINION NO. 495

OPINION AND ORDER ISSUING CERTIFICATE AND AUTHORIZING IMPORTATION OF NATURAL GAS

(Issued June 15, 1966)

ROSS, Commissioner:

On August 5, 1960, a certificate was issued to Pacific Gas Transmission Company (PGT) authorizing the construction and operation of a 614-mile section of 36-inch pipeline extending from the international boundary at Kingsgate, British Columbia to the Oregon-California boundary.¹ This section of pipeline was one portion of approximately 1400 miles of 36-inch pipeline connecting gas-producing fields in the province of Alberta to the facilities of Pacific Gas & Electric Company (PG&E) in northern California. PGT was originally authorized to deliver an average of 415,000 Mcf of gas per day to PG&E.

In the present proceeding PGT has applied (Docket No. CP65-213) for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act authorizing the transportation and sale through the same pipeline of an additional 200,000 Mcf of gas per day, delivery of the first additional 100,000 Mcf per day to begin on November 1, 1966 and delivery of the second additional 100,000 to begin on November 1, 1967; the certificate would also authorize construction and operation of certain additional facilities necessary to transmit the additional volumes of gas. PGT is also applying (Docket No. CP65-214) under Executive Order No. 10485, dated September 3, 1963, for

¹Pacific Gas Transmission Company, Docket No. G-17350, 24 FPC 134.

a Presidential Permit authorizing the construction, operation and maintenance of the pipeline required at the international boundary to permit the importation of the increased quantities of gas. PGT's third application herein (Docket No. CP65-215) is made under Section 3 of the Natural Gas Act for authorization to import natural gas from Canada.

Notices of intervention were filed by the State of Texas, the People of California and the California Public Utilities Commission (California PUC), the Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission, the Public Utility Commissioner of Oregon, and the City and County of San Francisco (San Francisco). By order of May 25, 1965, the Commission granted intervention to El Paso Natural Gas Company (El Paso), Texas Independent Producers and Royalty Owners Association, Permian Basin Petroleum Association, West Central Texas Oil and Gas Association (the last three, filing a joint brief on exceptions, will be referred to as TIPRO, *et al.*), California Gas Producers Association, Jade Oil and Gas Company, and Oil Producers Agency of California (the last three, filing a joint brief on exceptions, will be referred to as California Producers), Independent Petroleum Association of America (IPAA), Southern California Gas Company, Southern Counties Gas Company of California, Pacific Lighting Service and Supply Company (the last three, filing a joint brief on exceptions, will be referred to as California Distributors), and The Washington Natural Gas Company.

After a hearing, the presiding examiner's initial decision was issued February 17, 1966. The examiner

would issue PGT a certificate authorizing transportation and sale of the additional quantities of gas to PG&E and authorizing the importation of the gas from Canada. The initial decision states (pp. 25-26) that, since the original Presidential Permit issued August 5, 1960² granted permission to operate and maintain the facilities necessary to transport the gas across the international boundary, no amendment or additional Presidential Permit need be issued here.

Exceptions to the initial decision have been filed by the State of Texas, TIPRO, *et al.*, IPAA, and California Producers, all of whom oppose the issuance of the certificates sought by Pacific Gas Transmission Company. San Francisco and California PUC would approve issuance of the certificates but have excepted to the examiner's refusal to fix a lower rate of return ($6\frac{1}{8}$ percent) to PGT than the $6\frac{1}{4}$ percent allowed. They also except to the examiner's refusal to make a different computation of depreciation as affected by the net salvage which may be realized on the facilities. The Commission staff, while supporting the issuance of the certificates sought by PGT, has excepted to the refusal of the examiner to attach a condition requiring the renegotiation of certain prices to be collected for gas by Canadian producers in order to protect the American consumers from price escalation and to the further refusal of the examiner to require that "any future supplies of natural gas for the Pacific Gas & Electric Company market should come from domestic sources so that there may be some balance between the sources of supply" (Staff Brief on Exceptions, p. 9).

²Pacific Gas Transmission Company, Docket No. G-17352, 24 FPC 134, 143, Ordering Paragraph (D).

The regulatory bodies of Oregon, Washington and Idaho filed briefs opposing exceptions, as did California Distributors.

Oral argument has been requested by the State of Texas, TIPRO, *et al.*, IPAA and the California Producers.

We think that the exceptions to the examiner's initial decision must be denied and that the certificates applied for should be issued to the applicant. We are concerned here with already existing pipeline facilities which are not yet being utilized to their fullest capacity. The increased use of the existing pipeline facilities will reduce the unit cost of the gas supplied to California and will also reduce the unit cost of transportation of gas transported for El Paso and destined for the consumers in Washington, Oregon and Idaho. To refuse to issue certificates authorizing the importation, transportation, and sale of this additional gas would mean that some of the capacity of presently existing facilities would remain unused with resultant higher costs to the consumers in four states.

The arguments that have been made as to the inadequacy of the Canadian gas supplies, while they would be relevant to a determination of whether a new pipeline should be built, are not appropriate where existing pipeline facilities will be utilized to make delivery of the gas. Even if the Canadian supplies were shown to be too small to justify the construction of a new pipeline, it would seem desirable to allow already existing facilities to be used to bring out whatever gas may be available. In addition we think that there has been no showing that the Canadian supplies are inadequate. We considered this question before authorizing the

construction of these pipeline facilities. We then determined that the sources of supply were sufficient to justify construction of facilities which, with relatively little additional construction, would have capacity to carry all present and proposed gas imports. Nothing has been presented here which would persuade us that our prior determination was erroneous.

Those opposing these applications state that a similar amount of gas could be made available by domestic producers and urge that as a matter of policy the importation of gas should be restricted. It is urged that the importation of natural gas has a depressing effect on the domestic industry, especially domestic exploration, and that domestic supplies should be utilized wherever possible in order to encourage domestic exploration and development as well as to benefit the American industry.

Unlike the *Rock Springs* proceeding,³ the record in this case does not demonstrate that alternative methods exist for providing the needed volumes of additional gas at rates and under conditions more advantageous than those which will be achieved by certification of PGT's instant application.

The Commission will consider carefully in every case the effect of importations of natural gas upon the domestic industry and upon the exploration and development which may be needed to develop future gas supplies. In the circumstances of the present case, where the need of the market for additional gas is established, where the basic facilities to procure the Canadian gas have already been constructed, where no competing

³*El Paso Natural Gas Co.*, 30 FPC '77 (July 12, 1963).

application for transportation and sale from an alternative domestic source has been filed by any pipeline, and where there will be a reduction in unit cost of service which will benefit the consumers of four states, we think the benefits to be derived from granting these applications far exceed any alleged detriments to the domestic petroleum industry or its exploration and development program. There appears to be little doubt that California will absorb all the gas which producers in California can make available to pipelines there. While ample supplies of gas are available in Permian Basin and other areas in the southwest, the facilities for bringing this gas to California in the amounts desired by consumers are not now available, nor can they be available for some time.

The suggestion is made that the Canadian supplies may be cut off and are therefore unreliable. We think that the close relationship between the United States and Canada renders it unlikely that this sort of difficulty will arise. Also, this is an argument more properly advanced at the time of an application to construct new pipeline facilities. That a supply may be cut off in the future is not an argument against using existing facilities to bring out gas up to the time any cut-off occurs, although it may be an argument against investing in new facilities.

We have previously considered the contention here advanced that the Mandatory Oil Import Program would require the denial of authorization to import natural gas for domestic use. *The Montana Power Company*, Opinion No. 486, pages 5-6. We conclude that the Mandatory Oil Import Program does not apply to the importation of natural gas. In any event, in the

circumstances of this case, the factors, even if otherwise applicable, which gave rise to the Program, do not operate to prevent the authorizations sought by PGT.

Staff has suggested that the certificates be conditioned to require that Canadian producers supplying the gas to Canadian pipelines for transportation on a cost-of-service basis to PGT should submit to renegotiation of their contracts to eliminate price escalation provisions (based on weighted average field prices) for protection against possible price increases which would increase the cost of gas to PGT and, ultimately, the American consumer. Such a condition was not imposed when the present pipeline facilities were authorized, although 98 percent of the Canadian producers' contracts then contained such escalation provisions. See *Pacific Gas Transmission Company*, 24 FPC 134, 137. Later contracts do not contain these escalation provisions. About 54 percent of the reserves supporting the present proposed expansion were acquired under contracts without such escalation provisions. (The remaining 46 percent were acquired by extensions of existing contracts to cover reserves added by additional development in already dedicated fields.) New reserves are acquired under contracts which do not contain such escalation clauses.

There has been a decline in the percentage of reserves covered by the escalation clauses in question, and it appears this decline will continue. A majority of the additional gas that is the subject of the present applications will be furnished under contracts which do not contain these escalation clauses, and this will have a retarding effect upon any potential price esca-

lations. To require renegotiation of the producers' contracts, which we cannot directly control, might result in delay in obtaining the desired supplies of gas. There will be an immediate saving to American consumers when this gas is made available, and the potential price increase is some time in the future, if it occurs at all. We agree that it would be preferable if this type of escalation clause were not included in producer contracts, and its presence in contracts for new supplies would clearly be a factor in our consideration of any application for certification of pipeline facilities. In the circumstances here stated, however, we think the examiner was correct in his conclusion that the suggested condition not be included.

Staff has also suggested that it be here determined that future supplies of gas be drawn from domestic sources. We cannot bind future Commissions in their determinations as to what may best serve the public convenience and necessity in this regard, nor would it be wise to do so if we could. This is a question which should be passed upon in the light of the circumstances which may be presented at the time of a particular application to make use of particular reserves. Accordingly, it will not be predetermined here.

California PUC and San Francisco urge that the rate of return established in the 1960 certificate proceeding should be reduced from $6\frac{1}{4}$ percent to $6\frac{1}{8}$ percent. The examiner and the Commission Staff are of the view that any revision of the rate of return should be dealt with in a rate proceeding. While there are occasions where rates may be dealt with in a certificate proceeding, in general it is preferable that the prompt issuance of a certificate not be delayed by hear-

ing and consideration of rate revision issues. We think that there has been no such showing as would lead us to adjust the established rate of return in this proceeding. This ruling is without prejudice to any determination we may be called upon to make in a later proceeding.

For the same reasons, we approve the examiner's refusal to revise the annual depreciation rate and to reduce the dollar value of the plant to which depreciation is applied by 10 percent, the alleged net salvage on PGT's line.

We think that oral argument is not necessary in this case. In so ruling, we recognize the general question of policy as to whether restrictions should be placed upon the importation of natural gas, and, if so, what these restrictions should be, are matters of the greatest importance. This case does not, however, provide a suitable context in which to debate such general policies. General policy arguments would be more properly presented where the construction of new facilities is proposed to tap foreign gas supplies, rather than where the applicant seeks only to make use of existing facilities already authorized. The other questions which have been raised appear to have been fully presented by the briefs of the participants, and little benefit would be derived from oral argument as to them. The motions for oral argument will be denied.

The Commission finds:

(1) The applicant, the Pacific Gas Transmission Company, is engaged in the transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction

of the Commission, and is therefore a “natural gas company” within the meaning of the Natural Gas Act. See *Pacific Gas Transmission Company*, 24 FPC 134, Finding (5) p. 140.

(2) The additional facilities proposed by Pacific Gas Transmission Company hereinabove referred to and more fully described in the Pacific Gas Transmission Company applications and the evidence herein, will be used in the transportation and sale of the additional quantities of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such additional facilities, together with the construction and operation thereof, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Pacific Gas Transmission Company has an adequate supply of natural gas committed to it which will enable it to render the service herein authorized.

(4) The additional facilities proposed by Pacific Gas Transmission Company are adequate to render the supplemental service herein proposed.

(5) Pacific Gas Transmission Company is financially able to construct and operate the proposed additional facilities estimated to cost \$13,857,000.

(6) A market exists for the proposed additional sales of natural gas by Pacific Gas Transmission Company to Pacific Gas and Electric Company.

(7) The Pacific Gas Transmission Company plan for rendering the additional service to Pacific Gas and Electric Company is feasible.

(8) Pacific Gas Transmission Company is able and

willing, subject to the terms of this Order, properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission promulgated thereunder.

(9) The construction and operation of the facilities proposed by Pacific Gas Transmission Company and its sales and transportation of the additional quantities of natural gas, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the present and future public convenience and necessity, and a certificate of public convenience and necessity should be issued therefor.

(10) The proposed importation of the additional quantities of natural gas proposed by Pacific Gas Transmission Company is subject to the jurisdiction of the Commission under the provisions of Section 3 of the Natural Gas Act.

(11) The importation of the additional quantities of natural gas proposed by Pacific Gas Transmission Company in its application is appropriate and consistent with the public interest and should be authorized upon the terms and conditions of this Order.

(12) The terms of the existing Presidential Permit issued to Pacific Gas Transmission Company on August 5, 1960, 24 FPC 134, sufficiently provide for the proposed additional imports and no amendment or additional Presidential Permit is required.

The Commission orders:

(A) A certificate of public convenience and neces-

sity is hereby issued to the Pacific Gas Transmission Company authorizing it to import from Canada an additional 100,000 Mcf per day of natural gas commencing on or about November 1, 1966, and an additional 100,000 Mcf per day of natural gas commencing on or about November 1, 1967 for transportation and sale to the Pacific Gas and Electric Company for resale, all as more fully described in the applications filed herein and the evidence received in these proceedings.

(B) The authorizations granted to Pacific Gas Transmission Company under paragraph (A) hereof are subject to the terms and conditions imposed upon the authorizations granted to Pacific Gas Transmission Company *et al.*, by the Order of the Commission issued August 5, 1960, 24 FPC 134, insofar as said terms and conditions are applicable, and the said terms and conditions shall apply with respect to the additional gas imported, transported and sold under the authorizations here granted.

By the Commission.

(S E A L)

Joseph H. Gutride,
Secretary.

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

	Docket Nos.
Pacific Gas Transmission Company	CP65-213
	CP65-214
	CP65-215

**PRESIDING EXAMINER'S INITIAL DECISION
UPON AN APPLICATION FOR A PRESIDENTIAL
PERMIT AND UPON APPLICATIONS UNDER
SECTIONS 3 AND 7 OF THE NATURAL GAS ACT**

(Issued February 17, 1966)

APPEARANCES

Raymond N. Shibley, Richard H. Peterson, Malcolm H. Furbush, and John A. Sproul for Pacific Gas Transmission Company

Linward Shivers, Wagner Carr, C. L. Snow, Jr. and C. Daniel Jones, Jr. for the State of Texas

Richard E. Tuttle, J. Calvin Simpson and Sheldon Rosenthal for the People of the State of California and Public Utilities Commission of the State of California

Robert E. Simpson for Washington Utilities and Transportation Commission, Idaho Public Utilities Commission and Public Utility Commission of Oregon

Allan G. Shepard and Larry D. Ripley for Idaho Public Utilities Commission

Henry F. Lippitt, II, for Oil Producers Agency of California, California Gas Producers Association, and Jade Oil & Gas Company

Edward G. Najaiko, C. Frank Reifsnyder and Jeremiah C. Collins for El Paso Natural Gas Company

William I. Powell for Independent Petroleum Association of America

Roger J. Nichols and Eric W. Martens for Southern California Gas Company, Southern Counties Gas Company of California, and Pacific Lighting Gas Supply Company

George J. Meiburger for Washington Natural Gas Company

Robert Laughead for the City and County of San Francisco

John Davenport for Texas Independent Producers & Royalty Owners Association, West Central Texas Oil and Gas Association and Permian Basin Petroleum Association

Robert L. Russell and John J. Keating, Jr. for the Staff of the Federal Power Commission

FRAZEE, PRESIDING EXAMINER: This proceeding concerns applications filed on January 12, 1965, and amended on March 31, 1965, by the Pacific Gas Transmission Company (PGT) seeking the requisite certificates, import and Presidential Permits, which would authorize it to install, construct and operate the additional facilities¹ necessary to import an additional

¹On August 5, 1960, the Commission in *Pacific Gas Transmission Company*, 24 FPC 134, authorized PGT to construct and operate a 614-mile section, of a 1400-mile line, of 36-inch pipe extending from the Canadian-U.S. border (near Kingsgate, British Columbia) to the Oregon-California border to deliver to PG&E a daily contract quantity of 415,000 Mcf and a maximum daily demand of 454,000 Mcf of natural gas

200,000 Mcf² of natural gas per day from reserves dedicated by producers in the Province of Alberta, Canada. PGT also seeks the authority to sell and deliver these additional imported volumes of natural gas to the Pacific Gas and Electric Company (PG&E) at the Oregon-California border, from which point the gas will be transported, distributed and sold by PG&E to its customers in central and northern California.

On May 25, 1965, the Commission issued an order herein granting interventions,³ fixing dates for the fil-

to be imported from the Province of Alberta, Canada, and delivered to PG&E for resale and distribution in its California market area. The cost of this line and its appurtenant facilities amounted to \$116,940,000 (Ex. 45). The various regulatory agencies recognized, when they authorized the construction and operation of this 36-inch line, that it was oversized for the throughput of the initially certificated volumes of 415,000 Mcf per day. However, PGT there indicated that future authorizations would be sought to import additional volumes of natural gas to utilize the full capacity of the line.

²The 200,000 Mcf per day would be delivered to PG&E in two steps; the delivery of the first 100,000 Mcf/d would start on November 1, 1966 and the second 100,000 Mcf/d on November 1, 1967.

³Notices of intervention were filed by:

1. The State of Texas
2. The People of the State of California and the Public Utilities Commission of the State of California
3. The Washington Utilities and Transportation Commission
4. The Idaho Public Utilities Commission
5. The Public Utility Commission of Oregon
6. The City and County of San Francisco

Petitions to intervene were filed by:

1. El Paso Natural Gas Company
2. Texas Independent Producers and Royalty Owners Association
3. Permian Basin Petroleum Association
4. West Central Texas Oil and Gas Association
4. West Central Texas Oil and Gas Association
5. California Gas Producers Association

ing of prepared testimony and supporting exhibits⁴ and for a prehearing conference.⁵

At the prehearing conference held on July 22, 1965, dates were fixed for the filing of written motions, and replies thereto, directed to the admissibility of the filed prepared written testimony and supporting exhibits. The formal hearing was scheduled to convene on September 15, 1965.⁶

Numerous motions and replies thereto were filed, which were directed to the admissibility of all or portions of the prepared testimony and supporting exhibits filed by the State of Texas, the Permian Basin Petroleum Association, the People of the State of California and the Public Utilities Commission of the State of California; also to certain testimony offered jointly by the Oil Producers Agency of California, the California Gas Producers Association and the Jade Oil and Gas Company. These motions to exclude the proffered prepared direct testimony and supporting exhibits from the record herein were sustained.⁷ However, each of the parties was permitted to make an

6. Jade Oil and Gas Company

7. Independent Petroleum Association of America

8. Oil Producers Agency of California

9. The Pacific Lighting Companies

10. The Washington Natural Gas Company

⁴Applicant, PGT, to serve its prepared testimony and supporting exhibits on all parties on or before June 21, 1965. The Intervenor, and the Staff of the Commission, to serve any answering testimony and supporting exhibits on all parties on or before July 15, 1965.

⁵On July 22, 1965.

⁶Tr. 1, p. 128, ln. 21.

⁷Tr. 2, pp. 135-144.

offer of proof^s as provided by Section 1.28(b) of the Rules of Practice and Procedure of the Commission.

A hearing was held at which an opportunity was afforded all parties desiring to do so to offer relevant and material evidence, and a substantial volume of such evidence was offered and received. Further, those desiring to do so were permitted to file briefs.

This transportation of natural gas from the producing fields of Alberta, Canada, to the consumers of PG&E in California, is an international project. The basic original construction, as previously mentioned, partly resulted from United States authorizations obtained by PGT in 1960.⁹ The combined project operates through the joint effort of the following five internationally participating companies. These participants and their respective functions are described as follows:

1. The Alberta and Southern Gas Co. Ltd. (Alberta and Southern), incorporated under the Companies Act of Alberta, is a wholly owned subsidiary of PG&E. Its function is to purchase pipeline quality natural gas

^sTr. 8, pp. B and 993-995, the excluded testimony of the People of the State of California and the Public Utilities Commission of the State of California was marked as Exhibits 36 and 37 and rejected, but accepted as an offer of proof.

Tr. 11, pp. A and 1533-1534, the excluded testimony jointly sponsored by the Oil Producers Agency of California, the California Gas Producers Association and the Jade Oil and Gas Company was marked as Exhibit 52 and rejected but accepted as an offer of proof; also at Tr. 12, pp. A and 1739, 1760 a letter with attachments was marked at Exhibit 64 and rejected, but accepted as an offer of proof.

⁹For a discussion of the "Identity and Short Designation of Participants and Other Interests" see *Pacific Gas Transmission Company*, 24 FPC 144, 145 (the Examiner's decision) and the "Producers, Pipelines, and Public Authorities in Canada" at 24 FPC 134, 136 (the Commission Order).

from producers in the Province of Alberta and arrange for its transportation in Alberta and through British Columbia to the International Boundary where the gas is sold and delivered to PGT.

The National Energy Board of Canada authorized Alberta and Southern, in the original phase of this international project, to export 458,750 Mcf of natural gas per day.

Alberta and Southern owns no transmission facilities. Its plant consists of physical property and equipment valued at \$2,738,000 in 1964, which would not be increased as a result of the proposed increase in imports.

2. The Alberta Gas Trunk Line Company Limited (Trunk Line) was incorporated by a Special Act of the Alberta Legislature. Its function is the gathering and transporting, within the Province of Alberta, of the natural gas purchased at the tailgate of processing plants by Alberta and Southern. Trunk Line has constructed, and it operates, the facilities necessary to gather and transport¹⁰ the natural gas authorized to be exported from the Province of Alberta and the Dominion of Canada and imported into the United States in *Pacific Gas Transmission Company*, 24 FPC 134. It will construct and operate the facilities required to transport the additional 200,000 Mcf per day purchased by Alberta and Southern for export to the United States, which is the subject of these proceedings. Trunk Line has no corporate connection with any other com-

¹⁰Trunk Line's facilities consist of approximately 222 miles of receiving and delivery laterals and about 350 miles of main line extending from Alberta to the British Columbia border. Its investment in these in place facilities presently amounts to \$82,638,000 (Ex. 45).

pany participating in this project, except that Alberta and Southern holds one share of Class B Group II common shares of Trunk Line.

3. The Alberta Natural Gas Company (Alberta Natural) was incorporated and authorized by a special act of the Parliament of Canada to transport natural gas in interprovincial and foreign commerce. It currently transports natural gas owned by Alberta and Southern and by Westcoast Transmission Company Limited (Westcoast) from a point in Alberta near the Alberta-British Columbia boundary through British Columbia to the International Boundary near Kingsgate, British Columbia. It will construct and operate the additional compressor facilities¹¹ necessary to transport the additional 200,000 Mcf per day which is the subject of this hearing. Two-thirds of the common stock of Alberta Natural is owned by PGT and the remaining one-third is owned by the public.

4. PGT, the applicant herein, was incorporated in August 1957, in the State of California (Exhibit 2) and has since been authorized to do business in the States of Oregon, Idaho and Washington. It is a "natural gas company" within the meaning of that term under the Natural Gas Act. See *PGT*, 24 FPC 134, Findings (5), p. 140. It owns and operates the 614-mile section of the project pipeline from the International Boundary near Kingsgate, British Columbia, to the California-Oregon border which was authorized by this Commission in *PGT*, 24 FPC 134. PGT's actual in-

¹¹Alberta Natural consists of 106 miles of pipeline in which it presently has an investment of some \$32,637,000. Additional expenditures will be necessary for the facilities here requested.

vestment costs for the construction of this line and its appurtenant facilities amounted to \$116,940,000. PGT here seeks authorization to install, construct and operate the following additional facilities which, it alleges, will be required to transport the additional 200,000 Mcf per day:

- (1) 8,250 additional horsepower of compression at its compressor station No. 4 near Sandpoint, Idaho
- (2) A new 10,000 horsepower compressor station No. 6 near Rosalia, Washington
- (3) A new 10,000 horsepower compressor station No. 9 near Ione, Oregon
- (4) A new 16,000 horsepower compressor station No. 11 near Madras, Oregon
- (5) A new 16,000 horsepower compressor station No. 14 near Bonanza, Oregon
- (6) Additional metering facilities at the existing metering station at the Oregon-California border
- (7) A maintenance base near Candon, Oregon
- (8) A gas control computer in its office building in Spokane, Washington, and
- (9) It will also change its impellers at its station Nos. 8 and 13, near Wallula, Washington and Diamond Junction, Oregon, respectively.

The estimated cost of the foregoing proposed construction is \$13,857,000.

PGT purchases its gas from Alberta and Southern at the International Boundary pursuant to a contract dated January 31, 1961, as amended, and sells gas at the California-Oregon border to PG&E pursuant to a

tariff on file with the Federal Power Commission. PGT also presently transports about 150,000 Mcf per day of an authorized maximum of 300,000 Mcf per day of natural gas, under contract as a common carrier, for the El Paso Natural Gas Company (El Paso) to points on the PGT line in the States of Washington, Idaho and Oregon as specified by El Paso and authorized by this Commission in *PGT*, 24 FPC 134. This gas is purchased by El Paso from Westcoast at the International Boundary.

The final portion of this international pipeline is owned and operated by PG&E and consists of 298 miles of mainline beginning at a point of connection with PGT on the Oregon-California boundary and extending to Antioch, California. This section of the line originally cost \$54,250,000. It is entirely within the State of California.

CANADIAN GAS SUPPLY

The applicant, PGT, obtains its entire gas supply from Alberta and Southern under an existing cost-of-service contract (Exhibit 4). No changes, except to increase the volumes, will be made in this contract as a result of the increase in imports herein proposed. The applicant, PGT, presented a gas supply witness who testified concerning the adequacy of the gas reserves dedicated to Alberta and Southern and the deliverability of these reserves. This witness estimated the total recoverable gas reserves of pipeline quality gas available to Alberta and Southern on November 1, 1964 to be 5,509,340 million cubic feet at 14.73 psia at 60 degrees Fahrenheit (Exhibit 1, page 1). His testimony classified these reserves as follows:

Under contract	4,574,411 million cubic feet
Under option	553,513 million cubic feet
<hr/>	
Sub-total	5,127,924 million cubic feet
Other Available	381,416 million cubic feet
<hr/>	
Total	5,509,340 million cubic feet

The reserves "under contract" were attributed to acreage covered by contracts between producers in the Province of Alberta, Canada, and Alberta and Southern. "Under option" referred to those reserves underlying acreage committed to Alberta and Southern by options permitting it to purchase gas on specified definite conditions. It was stated that several of the fields have proved uncommitted reserves lying outside of the contract or option acreage. These reserves the witness classified as the "other available." The witness stated that, in his classification of reserves, he had not included in the "other available" category any reserves for those field from which a competing pipeline is purchasing gas. From the testimony of this witness it was shown that the reserves presently available to Alberta and Southern are estimated to be sufficient to meet its estimated delivery requirements¹² for 17 years from

¹²The total delivery requirements of Alberta and Southern to PGT and to Montana Power Co. (24 FPC 134) were shown in Exhibit 1, and at Tr. 166, also at page 9 of the Staff Brief, to be:

	Annual	Daily
1965	164,900	451.8
1966	164,900	451.8
1967	206,000	564.4
1968	248,900	681.9

The commitments of Alberta and Southern were shown (Exhibit 5; Tr. 336, Staff Brief p. 9) to be:

and after November 1, 1964, and to have a life index of 23.1 years (Exhibit 1, page 5). It was further indicated that, considering only the proved contracted reserves which have a life index of 19.2 years, Alberta and Southern would have sufficient gas to meet its estimated delivery requirements for 13 years from and after November 1, 1964¹³ (Exhibit 1, page 4). The adequacy of the gas supply to support the additional deliveries to PGT was not questioned. This reserve witness did not utilize a specific cutoff pressure although he estimated that generally the wells would produce up to 25 percent of their open flow. Eventually the shut-in well pressure will be less than the pipeline pressure. At this point compression will become necessary, which will increase the cost-of-service to the applicant and to the ultimate consumer.

The Montana Power Company

	Maximum Daily Demand (Mcf)	Daily Contract Quantity (Mcf)
1965	32,600	30,000
1966	44,000	40,000
1967	44,000	40,000
1968	55,000	50,000

Pacific Gas Transmission

	Maximum Daily Demand (Mcf)	Quantity (Mcf) Daily Contract
1965	454,000	415,000
1966	552,000	515,000
1967	665,000	615,000
1968	665,000	615,000

¹³The Staff, at page 10 in its brief, states "Alberta and Southern can meet its total proposed requirements for a period in excess of 13 years as of January 1, 1965. Predicated upon its reserves actually under contract Alberta and Southern has shown a deliverability life of approximately 13 years (Ex. 1, p. 4)."

CANADIAN GAS SUPPLY CONTRACTS

PGT, in support of its application for a certificate of public convenience and necessity submitted copies of the various gas purchase agreements utilized by Alberta and Southern to purchase gas from Alberta producers (Exhibit 6). Initially, in acquiring the gas for the project certificated at 24 FPC 134, Alberta and Southern utilized three types of contracts¹⁴ and the gas acquired thereunder fell into the following categories:

Contract Forms	Percentage of Gas Supply
A	77%
B	21%
C	2%

Contract Forms A and B have the same schedule of prices. Contract Form C is used in the purchase of casinghead gas and the schedule of prices for such gas is lower (Exhibit 6, tr. 325). It was noted by the Commission in 24 FPC 134, 137 “. . . that Alberta and Southern has entered into option agreements with several major producers covering areas containing both established and prospective reserves of great size. These agreements commit the producers to sell large additional volumes of gas at the same price as those in the present contracts, *when and as needed for the contemplated future expansion of this project.*” (Emphasis supplied.) Approximately 80 percent of the additional volumes here sought to be imported will come

¹⁴Contract Forms A, B and C were discussed by Presiding Examiner Weston at 24 FPC 134, 160 and were approved by the Commission in its Order, *supra*. These gas purchase contracts are set forth in summary form, and in full, Exhibit 6 on this record.

from the same fields from which the presently certificated import volumes are drawn. The reserves in these fields have increased by reason of additional development in areas covered by the original contracts and in other nearby areas not covered by the original contracts. The reserve appreciation in the fields covered by the original contracts¹⁵ accounts for 46 percent of the reserves for the presently proposed expansion. The remaining 54 percent of the reserves are covered by a new form of contract—Form D—which provides for a set schedule of prices established for the entire term of the contract and not subject to renegotiation. The 54 percent of the reserves are located in fields from which Alberta and Southern does not presently purchase gas. The gas supplies for the initial, and this proposed supplemental, projects will, when certificated, fall into these new categories:

Contract Forms	Percentage of Gas Supply
A	71%
B	15%
C	1%
D	13%

The pricing provisions in contracts Form A and Form B each contain in addition to fixed price escalations, certain renegotiation provisions beginning with the pricing period commencing July 1, 1968 and at each five-year interval thereafter during the term of the contract. These renegotiation provisions were elimi-

¹⁵These reserves are acquired by operation of the terms of the original contract and the increase in daily contract quantity is simply recorded by an exchange of letters to that effect between the producer and Alberta and Southern, the buyer.

nated from contract Form D under which gas purchases are currently being made.

As to the probable effect of these renegotiations on prices after July 1, 1968, the Vice President and General Manager of Alberta and Southern testified that export buyers of gas in Alberta were presently contracting for gas at prices both higher and lower than those being paid by Alberta and Southern but, in his opinion, the higher prices paid by others for export gas would not necessitate an upward renegotiation in Alberta and Southern's price. He does expect a request from the producers for a negotiation and, if an agreement is not reached between the producers and Alberta and Southern as to price, the matter is then referred to arbitrators whose findings are final and binding on both the buyer and the seller.

The witness testified that the Province of Alberta has a statute which provides the authority for the regulation of prices paid producers for natural gas but that he knew of no regulations issued thereunder by Alberta regulatory authorities for the establishment of ceiling prices for the sale of natural gas for export.

A witness for the Texas Independent Producers and Royalty Owners Association (TIPRO), an intervenor, testified, in rebuttal, that he had personally negotiated and excluded contracts for the sale of natural gas produced by him in Texas and in Alberta. It was his opinion the Form A and Form B contracts used by Alberta and Southern are "open-ended"; that renegotiation will inevitably result in prices higher than those specified in the periodic escalation schedules but that there was no way at this time to determine what the price will be following renegotiation.

When it issued the original certificate on August 5, 1960, authorizing this project in 24 FPC 134 the Commission had this identical problem before it—98 percent of the gas there authorized to be imported was purchased under contracts Form A and B—and it said, at page 137:

“Beyond these limiting factors, there remains the primary responsibility of the Canadian authorities to regulate producer and pipeline rates in such a way as to insure that the mutual benefits of the project as a whole will continue. A careful review of the Canadian legislation, including the National Energy Board Act, the Alberta Pipe Line Act, and the Alberta Gas Utilities Act, and the determinations made thereunder with regard to this project, demonstrates that the Canadian regulatory authorities now have a comprehensive rate and certificate jurisdiction at least equal to our own, and broad enough, in letter and spirit, to give effect to the principles of international comity and mutual responsibility on which the continuing success of this project ultimately depends. This legislation embodies the same ‘just and reasonable’ standards as are found in the Natural Gas Act and guarantees that the American and Canadian consumer will be treated alike.”

Since the issuance of this order at 24 FPC 134, the Commission has determined that indefinite pricing escalation provisions of certain types in domestic producer contracts for the sale of natural gas in interstate commerce are contrary to the public interest. *Pure Oil Co.*, 25 FPC 383, *affirmed*, 299 F. 2d 370; See FPC Order No. 174-B, 13 FPC 1576; FPC Order No. 232, 25 FPC 379, as amended by Order No. 232A, 25 FPC 609; FPC Order No. 242, 27 FPC 339, and Sec-

tion 154.91, *et seq.*¹⁶ of the Commission's Regulations Under Natural Gas Act; also *FPC v. Texaco Inc.*, 377 U.S. 33; *Atlantic Refining Co.*, 32 FPC 17.

These Form A and Form B contracts contain another indefinite pricing provision which requires the purchaser, commencing with the year 1968, to give annual written notice to the seller showing the purchaser's weighted average cost per Mcf of gas purchased from the fields located in whole or in part in Alberta. Should the buyer's weighted average cost per Mcf be higher than the price being paid to the seller then, in the following year, the buyer must make an appropriate price adjustment to seller to bring his price up to purchaser's weighted average cost for the previous year.

In accordance with the foregoing "open-ended" pricing provisions in the Form A and Form B contracts it was said by the Alberta and Southern gas supply witnesses that 86 percent of the contracts which underlie the gas supply after this proposed expansion would be renegotiated in 1968. This witness was of the opinion, however, that, should a higher price for some producers become effective as the result of renegotiation the remaining producers would not subsequently invoke the weighted average price provision to obtain

¹⁶Particularly Section 154.93(c) which defines one part of the "permissible" provisions as being, "Provisions that, once in five-year contract periods during which there is no provision for a change in price to a specific amount (paragraph (b) of this section), change a price at a definite date by a price-redetermination based upon and not higher than a producer rate or producer rates which are subject to the jurisdiction of the Commission, are not in issue in suspension or certificate proceedings, and, are in the area of the price in question. . . ."

an increase in price per Mcf. The witness would concede, however, should an increase in price result from renegotiation it could trigger the weighted average price provision which would result in a general price increase. Since Alberta and Southern sells this gas to PGT on a cost-of-service basis which is reflected in the monthly billing statements, the impact of any price increase would be immediate.

Alberta and Southern have, what they refer to as, a "postage stamp" practice in negotiating for natural-gas reserves in Alberta. Under this practice each producer throughout the Alberta and Southern purchase system is paid the same price for similar gas. Thus, when additional gas is discovered the producer knows what price Alberta and Southern will pay for it. This lends incentive to a search for and the production of natural gas.

The foregoing renegotiation provisions contained in the Form A and Form B contracts are, quite obviously, contrary to the indefinite pricing provisions of Section 154.93 of the Commission's Regulations Under Natural Gas Act. Since Federal Power Commission jurisdiction does not extend to the Alberta and Southern gas purchase contracts with producers in Alberta, Canada, and Staff at pp. 30, *et seq.*, in its brief, discuss three alternative proposals in an attempt to resolve, or minimize, the possibility of a price increase as a result of contract renegotiations. The Staff proposals are:

- (1) Grant the certificate to PGT
- (2) Deny the application
- (3) Condition the certificate to require Alberta and

Southern, in the forthcoming renegotiations, to negotiate for the conversion of the Form A and Form B contracts to the new Form D contract.

Alberta and Southern appears to be fully aware of the possibility of price increases upon renegotiation and have therefore developed a new Form D contract which contains none of the renegotiation nor weighted average price increase provisions. Approximately 54 percent of the reserves supporting the present proposed expansion were acquired under the Form D contract. Under this contract there is a fixed schedule of prices for the life of the contract. (Exhibit 6). The remaining 46 percent of the reserves for this project were acquired by extensions of the original Form A and Form B contracts for reserves added by additional development in the already dedicated fields.

Alberta and Southern now uses the Form D contract exclusively for the purchase of new reserves. This contract appears to comply with Section 154.93 of the Commission's Regulations Under the Natural Gas Act. The Commission, when it issued PGT its original certificate on August 5, 1960 (24 FPC 134), had these same Form A and Form B contracts under consideration and it there said on page 137:

"... The most important of these costs is the cost of purchased gas reflecting Canadian producer prices. In this connection it is worth noting that Alberta & Southern has entered into option agreements with several major producers covering areas containing both established and prospective reserves of great size. These agreements commit the producers to sell large additional volumes of gas at the same prices as those in the present contracts, when and as needed for the contemplated future

expansion of this project. These reserve acreage contracts should have an important stabilizing effect on field prices in the foreseeable future. . . .”

The “additional volumes” of gas referred to in the above quotation account for 46 per cent of the gas for this expansion project.

The Commission in 24FPC 134, 137, commented on the Alberta Gas Utilities Act, recognized it as being:

“... considerably broader and more detailed than the comparable provisions of the Natural Gas Act and its clarity and scope with reference to gas producers and processors should enable the Alberta Board of Public Utility Commissioners to avoid many of the difficulties we have experienced.”

The Commission said, *supra*, it placed the full faith and confidence in the Canadian authorities to determine and fix just and reasonable rates. The Alberta producers, by agreeing to sell additional supplies of gas for export to the U. S. under Alberta and Southern’s Form D contract, and Alberta and Southern, in developing and using this contract instead of the previously used Form A and Form B contracts, each demonstrate their desire “to give effect to the principles of international comity and mutual responsibility” to the end that the consumer of natural gas will be protected against “unjust and unreasonable” prices. A certificate of public convenience and necessity will therefore be issued to PGT unconditioned insofar as the gas supply contracts are concerned.

FIELD PRICE OF GAS IN ALBERTA, CANADA

Initially the base price for pipeline quality gas was

13.50 cents per Mcf.¹⁷ This initial base price has, under the fixed escalation provisions of the Form A and Form B contracts, increased to 17.0 cents per Mcf and it will increase a further 0.25 cents per Mcf on July 1, 1968 so that on that date the base price will be 17.25 cents per Mcf for pipeline quality gas of approximately 1080 Btu content. The new reserves acquired for this proposed expansion under the new Form D contract were obtained at an initial base price of 17.0 cents per Mcf. Therefore, when the gas commences to flow for this expansion of imports project, it will cost at the tailgate of the processing plant the same price per Mcf as is being paid currently for the initially certificated gas, namely, 17.0 cents per Mcf. The record here shows all of the gas purchased in Alberta by Alberta and Southern is of pipeline quality and delivered at the tailgate of the processing plants at a pressure base of 900 to 1000 psig. The revenues obtained from the sale of the by-products extracted from the raw gas stream entering the processing plants are retained by the producers since they own the gathering system and the processing plants.

OREGON-CALIFORNIA BORDER GAS PRICE

PGT's 36-inch pipeline was originally certificated with full knowledge it was oversized for the initial volumes to be transported, however, it was then understood the throughput capacity could be increased substantially at reasonable cost. In this proceeding the applicant seeks to take advantage of this additional throughput capacity. A PGT witness sponsored Ex-

¹⁷For a detailed discussion of the field prices of gas to Alberta and Southern see *PGT*, 24 FPC 134, 160-161, Presiding Examiner Weston's decision.

hibit 19 showing the cost of Canadian gas delivered to PG&E at the Oregon-California border delivery point. The following tabulation¹⁸ shows the average cost in cents per Mcf of gas delivered to PG&E by PGT under its cost of service tariff:

	Without the Proposed Expansion ¢ Per Mcf	Without the Proposed Expansion ¢ Per Mcf	Incremental Cost of the Additional Volumes ¢ Per Mcf
1967	34.15	31.04	
1968	34.58	30.73	22.60
1969	34.49	30.91	23.36
1970	34.26	30.83	23.60

The certification of the increased volumes will materially decrease the delivered unit price of gas beginning with the year 1968 at the Oregon-California border from 34.58 cents to 30.78 cents, a reduction of 3.85 cents per Mcf, as illustrated in the above tabulation.

Natural gas is also transported on a cost-of-service basis by PGT for El Paso and its Canadian supplier, Westcoast. The El Paso gas is distributed in the Pacific Northwest States. The 1968 estimated transportation charge for the El Paso gas, without these additional volumes is estimated to be 7.10 cents per Mcf. However, with the increased volumes here sought, the 1968 transportation charge to El Paso would decrease to 5.76 cents per Mcf, a reduction of 1.34 cents per Mcf.

The following tabulation shows a comparison of the transportation charges for the El Paso gas:

¹⁸From Exhibit 19, pp. 2 and 3, as modified at Tr. 1306, *et seq.* to give effect to the use of the double declining balance depreciation for tax purposes on the facilities proposed for installation in 1966 and 1967.

	Without the Proposed Expansion ¹⁹	With the Proposed Expansion ¹⁹	Estimated Reduction in Transportation Costs ²⁰
1966	6.17¢	6.08¢	\$ 46,000 ²¹
1967	6.91	5.80	564,000
1968	7.10	5.76	681,000
1969	7.05	5.80	639,000
1970	6.95	5.85	564,000

The reduction in transportation charges to El Paso, as shown above, would amount to \$2,494,000 during the period 1966-1970.

A petition to intervene was filed by El Paso on February 15, 1965; a supplemental petition to intervene was filed on May 7, 1965. In these El Paso alleged, *inter alia*, this Commission has authorized it to sell and deliver natural gas to PG&E at the Arizona-California border near Tapock, Arizona, a firm maximum contracted daily demand of 1,025,000 Mcf (at 14.9 psia) under its Rate Schedule G; also, that this Commission authorized PGT to transport for El Paso in the United States, up to 150,000 Mcf per day of Canadian gas which El Paso purchases from Westcoast. By agreement between PGT and El Paso these volumes may be increased. El Paso was permitted to intervene (by Order issued herein on May 25, 1965). At page 49, ln. 20, of the Transcript, counsel for El Paso stated:

Mr. Reifsnyder:

“El Paso has no application in this case; El Paso has no unfilled capacity by which, we could make deliveries to Pacific Gas and Electric Company.

¹⁹Tr. 1341, ln. 3, *et seq.*

²⁰Tr. 1342, ln. 20, *et seq.*

²¹For two month's period November 1, 1966 to December 31, 1966.

Therefore, we are not a competing applicant in this case, it has not been El Paso who offered any testimony. We have not filed any prepared testimony. That is all I think I can contribute."

Presiding Examiner:

"But El Paso did file a petition to intervene."

Mr. Reifsnyder:

"That is correct."

Presiding Examiner:

"So El Paso is a party?"

Mr. Reifsnyder:

"That is right. We are a participant in the proceeding under the Commission's rule, and our petition to intervene clearly sets forth our interest in this proceeding."

Much ado was provoked in several briefs from a comparison, by a PGT witness on cross examination, of the prices for natural gas delivered at the California border for delivery to PG&E by El Paso and PGT. No indication can be drawn, from the foregoing colloquy between the Examiner and counsel for El Paso, that El Paso either can or has the desire to make a proposal to supply the increased requirements of PG&E. El Paso was consistent in reiterating this position throughout the course of the hearing. (Tr. p. 425 and p. 1377).

ECONOMIC FEASIBILITY

The economic structure of this entire international operation is geared to cost-of-service arrangements between the individual companies. These arrangements

are designed to cover operating costs of the several companies and to realize a reasonable return on the depreciated plant investment.²² There was no issue on this record in regard to the economic feasibility of the proposed project. As the Staff says in its brief, for an increase of approximately \$30,000,000, which is slightly more than 10 percent of the total initial capital investment for the over-all international project, 50 percent more gas will be delivered to PG&E. Thus the feasibility of the entire project, because of the increased additional volumes that can be delivered for the 10 percent increase in capital investment, will rebound to the benefit of the consumer in lower rates.

FINANCING

The estimated cost to PG&T for additional facilities is \$13,857,000. This investment will be financed from funds on hand on January 1, 1964, and from funds gathered from operations and from bank loans. It was estimated these bank loans would be repaid in the three years period 1968 through 1970. There was no issue concerning the ability of PGT to finance the proposed expansion or as to the effect this financing would have on the PGT over-all financial plan.

MARKETS AND SUPPLY

There is no question PG&E will require large volumes of gas in the immediate future to supply its rapidly expanding market demand. The source of this

²²The Canadian companies charge a 7.5 percent rate of return on their individual investments. See Exhibit 7, p. 34, Alberta Gas Trunk Line Company, Ltd., transportation agreement; also Exhibit 7, p. 24, the Alberta Natural Gas Company, transportation agreement.

additional supply of gas generated some problems to be considered.

The California Gas Producers Association, the Oil Producers Agency of California and the Jade Oil and Gas Company (hereinafter referred to as the California Companies), argue that PG&E, in its estimates of the future availability of California produced gas, fails or is unwilling to make, what the California Companies term "a realistic" estimate of the future availability of northern California gas. The California Companies claim their future exploration, together with the development of present fields, will be more than sufficient to supply the increased market demand of PG&E for at least one year, therefore the certification to import the additional quantities should be deferred for at least one year. The California Companies also complain about these terms of the contracts offered them by PG&E for the purchase of their gas production. They allege the contracts are not uniform since some require a 2 to 1 peak to minimum delivery while others require 3 to 1 and some require as much as 5 to 1. When the producer is unable to deliver these peak quantities then the contract demand is reduced to the quantity it is able to deliver. The PG&E rebuttal witness states the contractual provisions complained about predate the purchase of out-of-state gas and were not designed to make room for it. This witness further testifies it is the consistent policy of PG&E to make a market for California produced gas as it becomes available. The contracts contain take-or-pay provisions, therefore if California gas is available it will either be taken or paid for by PG&E. The witness stated there were but two problems in the utilization of Califor-

nia gas. First, the location or locations of the production, and second, the Btu content of the gas. The domestic gas produced by PG&E from El Paso has a Btu content of 1090 and the Canadian gas has a Btu content of 1080 while, the witness states, the California gas varies greatly in heating value, the 1964 weighted average being 986 Btu.²³ The gas delivered by PG&E in the San Francisco-East Bay area is carefully controlled to approximate a 1075 Btu content. This necessitates a blending of the out-of-state gas with the California gas.

The PG&E requirements, and the source thereof, are reflected in the following compilation:

Daily Average Gas Supply
(Exhibit 17, p. 9 of 9)
MMcf

	1965	1968	1970
California produced	608.2	453.5	328.2
El Paso	1,020.3	1,028.9	1,035.8
PGT	416.8	614.4	614.4
Storage	58.1	10.9	4.9
Total	<u>2,103.4</u>	<u>2,107.7</u>	<u>1,983.3</u>

PG&E's Forecast of Average Daily Requirements
(Exhibit 18, p. 7)
MMcf

1965	1968	1970
<u>2,162</u>	<u>2,467</u>	<u>2,632</u>

The foregoing tabulation of the PG&E daily average gas supply and its estimated requirements in 1970, assuming the certification of the volumes here requested, reflect a need for approximately 650,000 Mcf additional (2,632.0 — 1,983.3 = 648.7 Mcf).

²³The three fields from which PG&E purchased the bulk of its California gas, and the Btu content, are the Rio Vista at 1045 Btu, the Grimes area at 1003 Btu and the Lathrop at 871 Btu (Tr. 1619).

It is also shown from the PG&E daily average gas supply estimate above that the supply of California produced gas will be reduced in 1970 by approximately fifty percent ($608.2 - 328.2 = 280.0$ Mmcf).

The California Companies argue this estimated reduction is unwarranted because, in their opinion, considerably more gas could be produced from their fields for PG&E if the terms of the PG&E purchase contracts were modified. They allege that present production is governed by PG&E's takes under the minimum purchase provisions of their contracts whereas, it is alleged, prior to the certification of the original PGT import authorization PG&E purchased more than the minimum volumes provided by the contracts. They further allege that PG&E uses the California production for peaking, or swing, and if the sharp peaking provisions were removed from the contracts more gas would be available. PG&E's evidence shows the discoveries of dry gas in the California area, where it purchases gas, have been sporadic and that the discoveries have varied widely in Btu content. Therefore, PG&E says it cannot safely rely upon estimated, but yet undiscovered, reserves in its planning for the acquisition of additional gas to supply prospective firm requirements. The PG&E witness said it would not be prudent to speculate on the possibility of future discoveries of California reserves from which to supply its customers, therefore it must make commitments to purchase known and available out-of-state reserves. The PG&E witness indicated the cost of the California produced gas, adjusted to 1,000 Btu dry basis and delivered by PG&E to its load centers would amount to approximately 11.0 cents per Mcf more than the

Canadian gas similarly adjusted as to Btu, including the volumes here sought. Thus, if the importation of the first increment of 100,000 Mcf of Canadian gas were deferred for two years and California produced gas could be substituted, it was estimated the California customers of PG&E would be required to pay additional costs of some \$8,030,000. The Commission made it abundantly clear, in its Rock Springs opinion, *El Paso Natural Gas Company, et al.*, 1963, 30 FPC 77, that in weighing the merits of a proposed project, the incremental cost of the proposed deliveries should be of primary importance.

To summarize, the PG&E witness says it is their policy to make a market for California produced gas and that over the years they have paid what they thought was an adequate price,²⁹ negotiated with the producers, that gave consideration to the load factor at which it acquires gas from out-of-state sources and other factors. The price paid California producers is comparable to the cost of gas to PG&E from underground storage. Therefore, PG&E says it will continue to make a market for the California produced gas, in lieu of underground storage, at comparable costs.

The following data, from the record, indicate that PG&E must curtail some of its industrial load in 1970 or before. This data reflect PG&E's dependence on California production.

PG&E Peak Day Gas Supply
(Exhibit 17, p. 8 of 9)
MMcf

California production	1,321	1,047	765
El Paso	1,025	1,025	1,025

²⁴Upwards from 30.0 cents per Mcf at the wellhead.

PGT	454	665	665
Storage	242	442	510
	<hr/>	<hr/>	<hr/>
Total	3,042	3,106	2,899 ²⁵

PG&E Peak Day Requirements
(Exhibit 18, p. 10)

	MMcf	
1965	1968	1970
<hr/>	<hr/>	<hr/>
2,678	2,932	3,185

Approximately one-third of PG&E's interruptible industrial load is used in steam electric plants (Exhibit 18, p. 2). These would be the first to be curtailed. They are equipped to burn oil.

From all the testimony it is clear that PG&E will not require all of the usable²⁶ California gas available but also the volumes here sought to be imported to meet its reasonable anticipated future supply requirements. The Staff of the Commission arrived at this same conclusion in its brief (p. 19).

ENGINEERING FEASIBILITY

There was no issue raised as to the adequacy of the proposed additional facilities to render the service proposed by the PGT in its application.

DEPRECIATION ISSUE AND NET SALVAGE

Since the beginning of operations of its transmis-

²⁵The differences between these totals and the correct sum of the totals of the numbers in the column above them, represent the pipeline operating tolerances as shown on Exhibit 17, p. 8 of 9.

²⁶The Lathrop field has a maximum delivery in excess of the amount considered available, or usable, by PG&E. Because of its low—871—Btu content this gas must be blended with higher Btu gas to bring the weighted average Btu content up to delivery specifications of 1075 Btu for PG&E's market.

sion line, PGT has been charging depreciation expense as part of its cost of service at the rate of 4 percent annually. The 4 percent rate, applied to plant on a straight line basis, reflects the 25-year life of the Canadian export permits, which were originally due to expire on October 31, 1986.

This Commission in its original authorization (24 FPC 134) approved PGT's Rate Schedule PL-1 including the above 4 percent depreciation rate. It also provided as follows:

“At such time as the aforesaid export permit, export license, or both, are renewed, extended or supplemented or modified so as to prolong or shorten the authorized export period, the unrecovered cost of the said depreciable gas plant shall be determined and the annual depreciation expense redetermined by the same method. (Original Sheet No. 12 to Pacific Gas Transmission Company's Rate Schedule PL-1, Ex. 5, *Pacific Gas Transmission Company, et al., supra*, 24 FPC 134, 150).”

The Commission thereby furnished a formula for application in this present circumstance. The Canadian export permit is to be extended for three years to October 31, 1989 in conjunction with the additional 205,000 Mcf to be transported daily by PGT.

The California Public Utilities Commission strongly objects to the present depreciation practice of PGT now in force, even though the extended life of the project will cause a reduction in the depreciation rate from 4 percent to 3.7 percent (Tr. 1001).

The witness for the California Commission would revise the annual depreciation rate to 3.25 percent (Tr. 1003), after applying a 10 percent net salvage to PGT's

line. In effect, this witness would reduce the rate, conforming it with the longer life of the physical plant, and also reduce the dollar amount of plant by 10 percent, to which the depreciation rate is applied. In his view, to the extent of these reductions, the California consumers would no longer be overcharged for the cost of depreciating PGT's line.

The Commission's Staff, in finding agreement with the position of PGT's witness, *i.e.*, a slight reduction in the rate of 4 percent to 3.7 percent, due to extending the life of the Canadian permits, believe the best forum for attacking the company's costs is one under proceedings of Sections 4 and 5 of the Act, namely, a rate proceeding.

The Examiner approves the Staff position. Opening the issue of depreciation, beyond what the company proposes, suggests that consideration might need to be given to other items in the cost of service. The Commission has clearly expressed its view in the original certificate case regarding any subsequent adjustment to the depreciation allowance.

The Examiner believes the depreciation expense issue is technical in nature and modification or adjustment requires the more appropriate forum the Staff recommends.

The Examiner, therefore, concurs with the company's proposal herein without a judgment as to its merits.

THE IPAA PROGRAM FOR A MORATORIUM ON THE IMPORTS OF NATURAL GAS

The Independent Petroleum Association of America (IPAA), an intervenor, is a well-known national trade

association representing producers in every producing area in the United States. It opposes the issuance of an import certificate to PGT upon the theory that the importation of gas will decrease, or may even eliminate, the use of domestic gas, that the domestic suppliers of gas in District V²⁷ have, and will continue to increase unless imported gas crowds it out of the market and, finally, to grant this import request would depress the search for and the use of domestic gas in District V and for these reasons would not be consistent with the public interest under Section 3 of the Natural Gas Act.

IPAA urges restrictions be placed on natural gas imports similar to those of the Mandatory Oil Import Program contending that imports, especially in California, are increasing at a faster rate than the increase in production. It is argued that restrictions on imports would increase the income of domestic producers which would create an additional incentive to explore for new reserves.

The question concerning California reserves and production, as well as the wellhead price being paid the California producer and the assurances of PG&E that it will make a market for California production of gas have been considered in some detail in other parts of this decision. No one here disputes the need of PG&E for additional gas to meet its market requirements. No one except PGT presented an application for authorization to supply the additional market requirements of PG&E. It is true that the State of Texas and TIPRO offered testimony, which was excluded

²⁷Includes the States of Alaska, Arizona, California, Nevada, Oregon, Washington and Hawaii.

from this record, indicating they had shut-in gas wells and uncommitted reserves from which the PG&E market requirements could be supplied, but they offered no program for transporting this shut-in gas or uncommitted reserves to the PG&E market. That California is an energy deficient state, and that the California markets must necessarily look more and more to out-of-state production for its future energy requirements, has been the consistent theme of California distributor and consumer witnesses before this Commission for years past. Such is the uncontroverted testimony of PG&E on this record.

Section 3 of the Natural Gas Act provides that the Commission, upon application, shall issue its order authorizing the importation of natural gas into the United States from a foreign country if, after a hearing, it finds the importation is in the public interest. Here PGT has shown by a preponderance of the evidence the need of PG&E for the gas, of the unreliability of California production for PG&E's expanding market, together with the feasibility of transporting the additional proposed volumes through its existing pipeline.

The Mandatory Oil Import Program recognizes, as did this Commission in *PGT*, 24 FPC 134, the close and friendly relationship between Canada and the United States and therefore exempted imports of oil from Canada into District V. No reference was made to the importation of gas. The Commission's guidelines and standards for the importation of natural gas from Canada have been unmistakably stated in *North-west Natural Gas Company, et al*, 13 FPC 221, 235; *American Louisiana Pipe Line Company, et al.*, 13

PFC 221, 235; *American Louisiana Pipe Line Company, et al.*, 20 FPC 575, 591; *Pacific Gas Transmission Company, et al.*, 24 FPC 134, 135 and reaffirmed in its Opinion No. 486 in *The Montana Power Company*, issued February 8, 1966. Nothing is found in this record which would cause this Examiner to impose the conditions requested.

The Staff recommends, if this import application is approved, any future supplies of natural gas for the PG&E market should come from domestic sources so that there may be some balance between the sources of supply. The People of the State of California and the Public Utilities Commission of the State of California oppose this recommendation. They argue that a further increment of gas from PGT might be the most economical supply available to PG&E and, if the Staff recommendation were adopted, PG&E would be precluded from making the import purchase thus forcing PG&E to pay higher prices for domestic gas which would increase rates to consumers. The Examiner approves the California position against the imposition of the Staff recommendation.

The People of the State of California and the Public Utilities Commission of the State of California,²⁸ The Washington Utilities and Transportation Commission, the Idaho Public Utilities Commission, the Public Utility Commission of Oregon, the City and County of San Francisco,²⁹ the Southern California Gas Company, the Southern Counties Gas Company of California and the Pacific Lighting Gas Supply Company, each support the PGT application. The El

²⁸Except upon the issue of depreciation and net reserve.

²⁹*Ibid.*

Paso Natural Gas Company does not object to the granting of a certificate to PGT. The Staff "concludes that the public convenience and necessity requires the issuance of the certificate requested pursuant to the Natural Gas Act." (Staff Brief, p. 49, conclusion).

PRESIDENTIAL PERMIT

PGT also applies for a Presidential Permit for the construction, operation, maintenance and connection, at the International Boundary between Canada and the United States of the facilities for the importation of the additional quantities of natural gas from Canada which are required, or may be necessary, for the importation here proposed. The requisite facilities for the initial project were authorized by the Presidential Permit issued August 5, 1960, in Docket No. G-17352, *PGT*, 24 FPC 134, 143 Ordering Paragraph (D). The facilities there authorized are presently in use. The proposed expansion to increase imports by 200,000 Mcf per day will be accompanied by adding compressor capacity to the existing system. No other change or alteration of the existing facilities at the International Boundary is required.

Since the existing Presidential Permit, *supra*, grants permission to construct, operate, maintain, and connect the facilities therein described for the purpose of transporting natural gas across the International Boundary in the amount, at the rate, and in the manner there authorized by the Commission and, since the application here is for permission to transport an additional 200,000 Mcf per day through the same facilities, no amendment or additional Presidential Permit is required. *Midwestern Gas Transmission Company, et al.*,

1965, Opn. No. 469, p. 4, 33 FPC ———; *The Montana Power Company*, Opn. 486, issued February 8, 1966.

FINDINGS AND CONCLUSIONS

Upon consideration of the entire record in this proceeding, the evidence adduced and the briefs filed, the Examiner finds and concludes, in addition to the findings and conclusions hereinabove stated, that:

- (1) The applicant, the Pacific Gas Transmission Company, is engaged in the transportation and sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and is therefore a “natural gas company” within the meaning of the Natural gas Act. See *Pacific Gas Transmission Company*, 24 FPC 134, Finding (5) p. 140.
- (2) The additional facilities proposed by Pacific Gas Transmission Company hereinabove referred to and more fully described in the Pacific Gas Transmission Company applications and the evidence herein, will be used in the transportation and sale of the additional quantities of natural gas in interstate commerce, subject to the jurisdiction of the Commission, and such additional facilities, together with the construction and operation thereof, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.
- (3) Pacific Gas Transmission Company has an adequate supply of natural gas committed to it which will enable it to render the service herein authorized.
- (4) The additional facilities proposed by Pacific Gas Transmission Company are adequate to

render the supplemental service herein proposed.

- (5) Pacific Gas Transmission Company is financially able to construct and operate the proposed additional facilities estimated to cost \$13,857,000.
- (6) A market exists for the proposed additional sales of natural gas by Pacific Gas Transmission Company to Pacific Gas and Electric Company.
- (7) The Pacific Gas Transmission Company plan for rendering the additional service to Pacific Gas and Electric Company is feasible.
- (8) Pacific Gas Transmission Company is able and willing, subject to the terms of this Order, properly to do the acts and perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission promulgated thereunder.
- (9) The construction and operation of the facilities proposed by Pacific Gas Transmission Company and its sales and transportation of the additional quantities of natural gas, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the present and future public convenience and necessity, and a certificate of public convenience and necessity should be issued therefor.
- (10) The proposed importation of the additional quantities of natural gas by Pacific Gas Transmission Company is subject to the jurisdiction of the Commission under the provisions of Section 3 of the Natural Gas Act.

- (11) The importation of the additional quantities of natural gas proposed by Pacific Gas Transmission Company in its application is appropriate and consistent with the public interest and should be authorized upon the terms and conditions of this Order.
- (12) The terms of the existing Presidential Permit issued to Pacific Gas Transmission Company on August 5, 1960, 24 FPC 134, sufficiently provide for the proposed additional imports and no amendment or additional Presidential Permit is required.

ORDER

WHEREFORE, IT IS ORDERED, subject to review by the Commission on appeal, or review by the Commission on its own motion, as provided in its Rules of Practice and Procedure, that:

- (A) An unconditioned certificate of public convenience and necessity is hereby issued to the Pacific Gas Transmission Company authorizing it to import from Canada an additional 100,000 Mcf per day of natural gas commencing on or about November 1, 1967 for transportation and sale to the Pacific Gas and Electric Company for resale, all as more fully described in the applications filed herein and the evidence received in these proceedings.
- (B) The unconditioned certificate of public convenience and necessity hereby issued is subject to the applicable terms and conditions of the Order of the Commission issued on August 5, 1960 to the *Pacific Gas Transmission Company, et al.*, 24 FPC 134.

HARRY W. FRAZEE
Presiding Examiner

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the matter of	)	Docket Nos. CP-213
Pacific Gas Transmission	)	CP-214
Company	)	CP-215

**APPLICATION OF THE STATE OF TEXAS
FOR SUBPENA DUCES TECUM OF
WITNESS BARRY HUNSAKER**

Comes now the State of Texas and respectfully requests the Presiding Examiner to issue a Subpena Duces Tecum to Barry Hunsaker of El Paso Natural Gas Company for the following reasons:

I.

The requested witness, Barry Hunsaker, is not a witness for the State of Texas, and can not be called unless this Subpena is issued.

II.

The testimony of the requested witness Barry Hunsaker will show to the Commission that El Paso Natural Gas Company has existing facilities and supplies to furnish at least 200 million cubic feet per day of natural gas to Northern California, even if all of its pending applications before the Federal Power Commission were granted.

III.

The testimony of the requested witness Hunsaker will show that the incremental costs of El Paso gas will be less than the incremental costs of the applicant in the above styled proceeding.

IV.

The testimony of the requested witness Barry Hunsaker is needed to provide the Federal Power Commission a complete record of possible alternative supply to the application here made under the rulings in Opinion No. 393 of the Commission and *City of Pittsburgh v. Federal Power Commission*, 237 F.2d 741.

V.

No witness is otherwise available to the State of Texas who possesses the knowledge and qualifications of Barry Hunsaker, and the State of Texas can not otherwise present the testimony and evidence needed in this proceeding.

Wherefore the State of Texas respectfully requests the Presiding Examiner to issue the attached Subpena Duces Tecum to Barry Hunsaker of El Paso Natural Gas Company.

Respectfully Submitted,
THE STATE OF TEXAS
WAGGONER CARR
Attorney General of Texas
LINWARD SHIVERS
Assistant Attorney General
C. L. SNOW, JR.
Assistant Attorney General
C. DANIEL JONES, JR.
Assistant Attorney General

September 16, 1965

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA)

VERIFICATION

LINWARD SHIVERS, being first duly sworn, on oath says that he is an Assistant Attorney General of the State of Texas, that he has signed the foregoing Application for Subpena Duces Tecum of Barry Hunsaker, that he is authorized to do so, and that all statements therein contained are true and correct to the best of his knowledge, information and belief.

LINWARD SHIVERS

Subscribed and sworn to before me this 16th day of September, 1965.

ANN G. LANZILATTA
Notary Public in and for the
City of Washington, District
of Columbia.

FPC Form 44

UNITED STATES OF AMERICA FEDERAL POWER COMMISSION

Subpena Duces Tecum

In re: PACIFIC GAS TRANSMISSION
Docket Nos. CP65-213;
CP65-214, CP65-215
To BARRY HUNSAKER, EL PASO
NATURAL GAS COMPANY,
EL PASO, TEXAS

YOU ARE HEREBY required to appear before the Honorable HARRY W. FRAZEE, the Federal Power Commission, at 441 G Street NW in the city of Wash-

ington, D. C. on the 21st day of September, 1965, at 10:00 o'clock a.m. of that day, to testify concerning the availability of natural gas to Northern California through facilities of El Paso Natural Gas Company.

And you are hereby required to bring with you and produce at said time and place the following: All documents, work papers, memoranda and other written instruments relating to the above matters.

IN WITNESS WHEREOF, the undersigned, being duly and lawfully authorized so to do, has hereunto set his hand at Washington, D. C., this 16th day of September, 1965.

HARRY W. FRAZEE
Presiding Examiner

Fail not at your peril.

IN TESTIMONY WHEREOF, the seal of the Federal Power Commission has been affixed hereto this 16th day of September, 1965.

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the matter of	)	Docket Nos. CP-213
Pacific Gas Transmission	)	CP-214
Company	)	CP-215

**MOTION OF THE STATE OF TEXAS TO
REVERSE RULING OF PRESIDING EXAMINER
AND ISSUE SUBPENA DUCES TECUM**

TO THE FEDERAL POWER COMMISSION:

Comes now the State of Texas and respectfully moves the Commission to reverse the rulings of the Presiding Examiner in this proceeding excluding the testimony of El Paso Natural Gas witness Barry Hunsaker and denying the issuance of a subpoena duces tecum to compel his testimony.

During the prehearing conference of these proceedings held on July 22, 1965, counsel for the State of Texas made available to the parties to this proceeding 20 pages of proposed testimony and 6 exhibits of Barry Hunsaker, Chief Pipeline Engineer for El Paso Natural Gas Company.

All parties to these hearings were advised that this evidence would be sought to be made a part of the record by reference in these proceedings which commenced on September 15, 1965.

Mr. Barry Hunsaker is the Chief Pipeline Engineer for El Paso Natural Gas Company, a party to these proceedings. El Paso Natural Gas Company is a major transporter of gas to California, for ultimate use both in southern California and northern California.

The evidence sought by the State of Texas to be presented by witness Hunsaker would show that there is an alternative method of supplying gas to California at a firm price and a cheaper price than the gas sought to be imported to California by the pending application.

Witness Hunsaker has made a study showing the cost of delivering an additional 325,000 Mcf/day through one of its existing pipelines to the California border at Topock. This study was presented in the Gulf Pacific hearings (Docket No. CP64-76) but there is no application pending based on this study. This supply is in excess of the Tailored Gas Supply Program applications made therein.

If required to testify, Mr. Hunsaker would present evidence showing that there is an alternative supply of gas available to Pacific Gas & Electric and that this alternative supply of gas would be available to Pacific Gas and Electric in volumes sufficient to fulfill P G & E's requirement for gas now sought to be supplied from the Canadian sources, at a cost less than the cost of P G & E's proposed additional Canadian supplies.

On August 16 and 27, motions were filed by the various California companies opposing making the evidence offered by the State of Texas through witness Hunsaker a part of the record. On August 23, 1965, and September 9, 1965, the State of Texas filed their reply in support of the inclusion of the proposed testimony and exhibits of witness Hunsaker. (Excerpts from these replies are attached and made a part hereof for the purpose of showing the State's position in requesting that the motions by the various California

companies to exclude the testimony and exhibits of Barry Hunsaker be denied.)

No objection to the introduction of this testimony was offered by Staff Counsel for the Commission.

At the opening of the hearings on September 15, 1965, the Presiding Examiner sustained the objections to the inclusion of proposed evidence of the State of Texas stating that (Tr. p. 139, 140) :

“The testimony and supporting exhibits sought to be incorporated herein was given in the Gulf Pacific matter by an employee of and witness for the El Paso Natural Gas Company by the name of Barry Hunsacker (sic). The record in Gulf Pacific has been closed and is presently under consideration by Examiner Kutrz. The testimony and supporting exhibits of the Witness Barry Hunsacker (sic) sought to be incorporated herein relate to the location, design and cost of facilities to enable El Paso to deliver an additional 325 Mcf per day of natural gas in the Gulf Pacific Case, as well as an additional 250 Mcf per day as proposed by El Paso in Docket No. CP64-76, which docket was also consolidated with the Gulf Pacific Matter.

“These volumes are to be delivered if certificated to the southern California companies for distribution by them to the southern California markets, not to the San Francisco or northern California markets for which Pacific Gas Transmission and P G & E herein seek additional supplies of gas.

“Motions were filed by the Pacific Gas Transmission Company, the Public Utilities Commission of California, the City and County of San Francisco and the Pacific Lighting Companies to exclude this testimony and the supporting exhibits of Barry Hunsacker (sic).

“Replies to these motions were filed by the State of Texas and by TIPRO. El Paso apparently knows nothing about this proposal of the State of Texas for there is no application here by El Paso for authorization to increase its pipeline capacity to transport this additional gas. It has, however, asked for authorization in CP63-204 and CP64-76, the Gulf Pacific Case, to increase its pipeline capacity to deliver an additional 575 Mcf per day, which appears to be its full capacity.

“Also the testimony sought to be incorporated herein relates to an entirely different project, with sources of supply and delivery points different from those here under consideration.

“This proposal to incorporate into this record the testimony concerning an entirely different project from a completely different record present an innovation to the rules of evidence.

“The motions to exclude the proposed testimony and supporting exhibits of the Witness Barry Hunsacker (sic) are sustained.”

The Presiding Examiner was in error in ruling that the evidence sought to be used by the State of Texas was evidence in the Gulf Pacific record (Docket No. CP64-76) to be used in support of a pending application.

As stated by the attorney for El Paso Natural Gas, Mr. Frank Reifsnnyder at page 427 of the transcript in this (PGT) hearing:

“This alternate showing that he made, which was not a part of El Paso’s application, showed the reinforcement of the existing system, and the engineering and the costs that would be sustained in order to accomplish that.”

The State of Texas broadened its original request for the presentation of evidence by reference of Witness Hunsaker to cover "alternative supplies of gas" and requested that the Presiding Examiner issue a subpoena duces tecum to require the production of Mr. Hunsaker's requested evidence. (A copy of the application for the subpoena and the subpoena are attached to and made a part hereof and references made thereto for the purpose of showing the grounds for issuance of a subpoena.)

After oral argument held before the Presiding Examiner on September 16, 1965, the request for subpoena to adduce the required information was denied.

The Examiner again erred in ruling that the evidence of Barry Hunsaker should not be secured by issuance of subpoena duces tecum. The State of Texas sought this subpoena for the purpose of showing the availability of natural gas to northern California through sources of supply and transmission facilities known to the witness Barry Hunsaker. The Examiner ruled at page 429 of the transcript as follows:

"There is no indication here by El Paso . . . that they have supplies of gas to sell in the northern California market . . . the application for a subpoena for the witness Barry Hunsaker is denied."

Briefly, not only is the testimony of witness Hunsaker highly relevant and material but it is in keeping with the holding in the *City of Pittsburgh v. Federal Power Commission*, 237 F 2d 741 (D. C. Cir. 1956) and the "*Rock Springs*" case, 30 FPC 77 (1963), that the Commission should consider alternative means to determine whether a particular proposal would serve the public convenience and necessity.

Accordingly, it is respectfully requested that the Presiding Examiner's rulings be reversed and that the testimony and exhibits of witness Hunsaker be made a part of the record in this proceeding, and that a subpoena issue to require witness Hunsaker to present evidence in these proceedings.

Respectfully submitted,

THE STATE OF TEXAS

WAGGONER CARR

Attorney General of Texas

C. L. SNOW, JR.

Assistant Attorney General

C. DANIEL JONES, JR.

Assistant Attorney General

LINWARD SHIVERS

Assistant Attorney General

CITY OF WASHINGTON)

DISTRICT OF COLUMBIA)

VERIFICATION

LINWARD SHIVERS, being first duly sworn, on oath says that he is an Assistant Attorney General of the State of Texas, that he has signed the foregoing motion to reverse ruling of Presiding Examiner and issue subpoena duces tecum, that he is authorized to do so, and that all statements therein contained are true and correct to the best of his knowledge, information and belief.

LINWARD SHIVERS

Subscribed and sworn to before me this 21st day of September, 1965.

ANN G. LANZILATTA

Notary Public in and for the
City of Washington, District
of Columbia

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in these proceedings in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D. C., this 21st day of September, 1965.

LINWARD SHIVERS

Excerpt from "REPLY OF THE STATE OF
TEXAS TO MOTIONS TO EXCLUDE TESTI-
MONY AND EXHIBITS OF STATE OF
TEXAS' WITNESSES BARRY HUNSAKER,
BOB R. HARRIS AND ARLEN EDGAR,
WITNESS FOR PBPA"

(Filed August 23, 1965)

I.

"Without restating the objections declaring the irrelevancy of the Hunsaker, Harris and Edgar testimony, certain facts are set forth for the benefit of the Examiner in clarifying the record.

"Hunsaker's testimony offered by incorporation by reference in this proceeding is not the testimony offered

in the Gulf Pacific Case in support of a then pending application or a subsequently filed application.

“El Paso made an Original Application to deliver an additional 250 M²cf/d via an *existing line* over and above the volume it was then transporting (Docket No. CP 64-76).

“El Paso made a First Amendment to its Original Application by preparing an *alternative* project to deliver, 575 M²cf/d via a *new line*, not intending to supercede the basic application of 250 M²cf/d, but as an alternative thereto.

“El Paso, also, at the request of the Pacific Lighting Companies, made a study of the possibility of delivering 325 M²cf/d in addition to the 250 M²cf/d proposed in the basic application via an *existing pipeline*. *however, El Paso did not file an application on this study.*

“Therefore, the testimony offered by Hunsaker is not testimony offered in support of an application, but is one of the contrary, an independent study relating to 325 M²cf/d through the existing pipeline in *addition* to the 250 M²cf/d originally applied for. The Hunsaker’s testimony incorporated by reference and his exhibits will show to the Examiner the cost of the additional facilities and that El Paso can deliver gas to the California-New Mexico border at around 22.5¢ per Mcf which is a competitive price with the foreign gas that the applicants in this hearing request to be brought in. This price could possibly be reduced even more as set out in the testimony of Mr. Moulton hereinafter quoted in this reply, and found in attached Exhibit A.

“It is undisputed that neither El Paso nor the State

of Texas have a competitive project to that of the applicants before the Examiner in this proceeding.”

Excerpt from “REPLY OF THE STATE OF TEXAS TO MOTIONS TO EXCLUDE TESTIMONY AND EXHIBITS OF BARRY HUNSAKER BY SOUTHERN CALIFORNIA GAS COMPANY, SOUTHERN COUNTIES GAS COMPANY OF CALIFORNIA, AND PIPE LINE GAS SUPPLY COMPANY”

(Filed September 9, 1965)

I.

“It is undisputed that the testimony and exhibits of Barry Hunsaker were prepared by El Paso Natural Gas Company (El Paso) for proposed resale in *Southern California* in fact, and as stated in our original reply, the study was initiated at the request of these very proponents of this motion to exclude.

“The interesting fact obviously misunderstood by Southern Gas Company, et al., is that El Paso has two points of delivery at the Arizona-California line. One being at *Blythe* station which is used for southern California service. The second point of delivery is to the north of Blythe and is at *Topock*. The Topock station is primarily used for northern gas delivery.

“The study under which the testimony and exhibits offered was based on delivery at the Topock station.

“Therefore, it is inconceivable that the testimony and exhibits are not relevant to Northern California, because *if* El Paso were to deliver to Northern California the same station would be used—that being *Topock*.

II.

“It is further undisputed that El Paso is not an applicant for a competitive certificate in this proceeding. However, alternative service is not irrelevant and immaterial for the simple reason that the Examiner does not have to *select* an applicant based on a comparative showing. This Examiner has to grant or deny the one application, but in so doing he should be free and has the obligation to consider all relevant and material testimony and exhibits that tend to show a comparable and less costly alternative, *even though that alternative is not now seeking a competitive application.* (Rock Springs and City of Pittsburg; cited in original reply)”

Nat. Energy Bd.

Exhibit No. 50

April 6-8, 1965

PACIFIC GAS AND ELECTRIC COMPANY

245 Market Street

San Francisco 6, California

March 23, 1965

Westcoast Transmission Company Limited

1155 West Georgia Street

Vancouver 5, British Columbia

Gentlemen:

This is in reply to your letter of March 12, 1965, addressed jointly to Alberta and Southern Gas Co., Ltd., Pacific Gas Transmission Company, and Pacific Gas and Electric Company, offering to sell us 207,000 Mcf per day of natural gas at the southern terminus of your pipeline near Sumas, Washington, at an initial

price of 29 cents (U.S.) per Mcf, based on a 92% load factor.

We appreciate your submitting this offer to us, but we have already procured in Alberta a much more economic supply of gas in quantities that will meet our needs at least through 1967. The sum of your price, the estimated cost of moving the gas from Sumas to Pendleton, and the incremental cost of transmitting it from there to the San Francisco Bay area would be greatly in excess of the field price for our Alberta gas plus the incremental cost of transporting it to the San Francisco area through our existing Alberta-to-California pipeline.

Moreover, should we be prevented for any reason from taking the gas which we have purchased in Alberta, our alternative supply would be from the gas-producing areas of southwestern United States. The cost of gas from this source delivered to the San Francisco area would be much lower than the delivered cost of your gas.

We hope that you will be in a position at some future time to offer us a supply of gas at a competitive price. Any such offer would, I assure you, receive very serious consideration.

Yours very truly,
ROBERT H. GULER

RHG:S

**PACIFIC GAS AND ELECTRIC COMPANY
COMPARATIVE COSTS OF ADDITIONAL
OUT-OF-STATE GAS**

The following comparison of the incremental costs of additional out-of-state gas in the range of 200 M²cf

delivered at the California border has been prepared from sources hereinafter described.

	<u>Range of Costs—Cents per Mcf</u>
Alberta gas	21.65
Westcoast gas	30.8 to 32.3
El Paso gas	22.53

Alberta gas

The cost at the California-Oregon border is based on estimates prepared in connection with the plan now pending before the Canadian National Energy Board and the Federal Power Commission for an additional 100 M² cubic feet per day late in 1966 and a second 100 M² late in 1967. Since 1968 would be the first full year of operation for the entire increase, the incremental cost is for that year. This cost is the difference between the cost for that year (a) of 615 M² under an export permit expiring in November 1989 and (b) of 415 M² under a permit expiring in November 1986. The costs for 1969 and 1970 do not change appreciably. Table 1 shows the derivation of the incremental cost. The figures for 615 M² appear in tse P.G.T. application to F.P.C., Exhibit P (2) and for 415 M² from P.G.&E. work papers.

Westcoast gas

The range of costs and other derivation is shown on Table 2. The costs at Pendleton are those supplied by Westcoast. The transport cost from Pendleton to the California-Oregon border is a proration on the mileage basis of transport costs for 200 M² of Alberta gas from Kingsgate to the California border. The use of the incremental costs furnished by Westcoast for exchange between Sumas and Pendleton appears inconsistent

with F.P.C. practices of requiring the use of rolled-in costs. Such costs, while not furnished, would be higher than the incremental costs and would increase the costs shown at the California border.

El Paso gas

The source of the cost shown appears on Table 3. It has been assumed that El Paso would make 200 M² available to P.G.&E. out of its 575 M² project if that market became available to it.

P.G.&E. Transportation Costs

The estimated incremental costs of transporting 200 M² of additional gas from the Oregon border to Antioch, neglecting the other uses of this section of the Alberta-California line, is between 2" and 2.5¢.

The Topock-Milpitas lines would require some looping to handle 200 M² in addition to the present El Paso contract demand of 1025 M²cf per day (14.9¢ base). No engineering design nor cost estimate has been made for this increase. It appears to be within the range of reasonableness to assume that the unit incremental transportation cost would be some 5 to 6¢ per Mcf.

OF ALBERTA AND SOUTHERN GAS DELIVERED AT CALIFORNIA-OREGON BORDER

1968 Costs

	415 M ² CF/Day		615 M ² CF/Day		200 M ² CF/Day Incremental Cost	
	Volume		Volume		Volume	
	Cost M\$	M ² CF	Cost M\$	M ² CF	Cost M\$	Cost ¢ M ² CF Per Mcf
Canadian Dollars						
Field Cost of Gas	28868	153300	42951	228100	14035	74800 18.83
Alberta and Southern Costs	725		734		9	
Alberta Gas Trunk Line Costs	9689		10127		438	
Cost Delivered to Alberta Nat- ural Gas	39280	153300	53321	228100	14532	74800 19.43
Alberta Natural Gas Costs	3673		4407		734	
Costs Delivered to Pacific Gas Transportation	42953	153300	58219	223100	15266	74800 20.41
Less Portion Paid in U.S.\$	6567		6836		269	
Balance—Canadian \$	36386		51383		14997	
U.S. Dollars						
Balance in U.S. \$ at .925 Exchange	33657		47529		13872	
Total Cost to Pacific Gas Trans- mission	40224	153300	54365	228100	14141	74300 18.91
Deduct Pacific Gas Transmission Compressor Fuel	269	1024	836	3509	567	2435 22.82
Balance	39955	152276	53529	224591	13574	72315 18.77
Pacific Gas Transmission Costs...						
Compressor Fuel	269		836		567	
Other	13413		14931		1518	
Total	13682	152276	15767	224591	2085	72315 2.88
Total at California-Oregon Border	53637	152276	69296	224591	15659	72315 21.65

INCREMENTAL COST OF 200 M²CF PER DAY OF WESTCOAST GAS DELIVERED TO CALIFORNIA-OREGON BORDER

	Case 1	Case 2
Price at Sumas	(a) 29.0¢/Mcf	(b) 28.1¢/Mcf
Westcoast prediction of El Paso exchange charge		
Sumas-Pendleton	(b) 1.7¢	(e) 1.1¢
Total at Pendleton (Stanfield tap)	30.7¢	29.2¢
Incremental P.G.T. transport cost to California-Oregon border	(c) 1.6¢	1.6¢
Total	32.3¢	30.8¢

Notes:

- (a) Price quoted by Mr. McMahon during October 8, 1964 meeting.
- (b) Price quoted at October 8, 1964 meeting and supported by undated table prepared by El Paso and furnished by Mr. Allyne. Table shows incremental cost of 1.65¢/Mcf for 100 M². This cost is lower than costs for 50 M² of 2.91¢, for 250 M² of 2.92¢, for 350 M² of 3.57¢ and for 400 M² of 4.14¢.
- (c) Computed from P.G.T. application of F.P.C. and working papers:

		Thousands of Dollars				
1960 Costs	Vol. Calif. Border	Com-				
	Avg. Per Day	Annual	pres- sor Fuel	Other Costs	Total	Cost per Mcf
	615	224,591	836	14,931	15,767	7.02¢
	415	152,276	269	13,413	13,682	8.98¢
	200	72,315	567	1,518	2,085	2.89¢

Kingsgate to California-Oregon border 613 miles
Stanfield to California-Oregon border 336 miles
Incremental cost Stanfield to California-Oregon border $2.98 \times \frac{336}{613} = 1.58¢$

- (d) Price at 100% load factor quoted in letter of November 17, 1964 from Mr. Allyne to Mr. Moulton.
- (e) Price from same letter, Case 4, 213 M² from Fort Nelson.

EL PASO ESTIMATES OF COST OF GAS DELIVERED TO THE CALIFORNIA BORDER

Incremental Costs (a)

	Project			
	250 M ² /Day		575 M ² /Day	
	L.F.	Cost/Mcf¢	L.F.	Cost/Mcf¢
1968	91.66	20.57	95.0	22.66
1969	94.74	20.69	95.0	23.01
1970	98.3	20.05	95.0	22.69
Average 14.9¢ base	94.9	20.43		22.79
Average 14.73¢ base		20.2		22.53

Note: (a) I.N.G.A. Bulletin of November 1964 digest of Travis Petty testimony in El Paso et al F.P.C. hearings October 7-9, 1964.

UNITED STATES OF AMERICA FEDERAL POWER COMMISSION

In the matter of	)	Docket Nos. CP-213
Pacific Gas Transmission	)	CP-214
Company	)	CP-215

APPLICATION OF THE STATE OF TEXAS FOR SUBPENA DUCES TECUM OF WITNESS BARRY HUNSAKER

Comes now the State of Texas and respectfully requests the Presiding Examiner to issue a Subpena Duces Tecum to Barry Hunsaker of El Paso Natural Gas Company for the following reasons:

I.

The requested witness, Barry Hunsaker, is not a witness for the State of Texas, and can not be called unless this Subpena is issued.

II.

The testimony of the requested witness Barry Hun-

saker will show to the Commission that El Paso Natural Gas Company has existing facilities and supplies to furnish at least 200 million cubic feet per day of natural gas to Northern California, even if all of its pending applications before the Federal Power Commission were granted.

III.

The testimony of the requested witness Hunsaker will show that the incremental costs of El Paso gas will be less than the incremental costs of the applicant in the above styled proceeding.

IV.

The testimony of the requested witness Barry Hunsaker is needed to provide the Federal Power Commission a complete record of possible alternative supply to the application here made under the rulings in Opinion No. 393 of the Commission and *City of Pittsburgh v. Federal Power Commission*, 237 F.2d 741.

V.

No witness is otherwise available to the State of Texas who possesses the knowledge and qualifications of Barry Hunsaker, and the State of Texas can not otherwise present the testimony and evidence needed in this proceeding.

Wherefore the State of Texas respectfully requests the Presiding Examiner to issue the attached Subpena Duces Tecum to Barry Hunsaker of El Paso Natural Gas Company.

Respectfully Submitted,

THE STATE OF TEXAS

WAGGONER CARR

Attorney General of Texas

September 16, 1965

LINWARD SHIVERS
Assistant Attorney General

C. L. SNOW, JR.
Assistant Attorney General

C. DANIEL JONES, JR.
Assistant Attorney General

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA)

VERIFICATION

LINWARD SHIVERS, being first duly sworn, on oath says that he is an Assistant Attorney General of the State of Texas, that he has signed the foregoing Application for Subpena Duces Tecum of Barry Hunsaker, that he is authorized to do so, and that all statements therein contained are true and correct to the best of his knowledge, information and belief.

LINWARD SHIVERS

Subscribed and sworn to before me this 16th day of September, 1965.

ANN G. LANZILATTA
Notary Public in and for the
City of Washington, District
of Columbia.

My Commission expires June 14, 1967.

FPC Form 44

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Subpena Duces Tecum

In re: PACIFIC GAS TRANSMISSION

Docket Nos. CP65-213;

CP65-214; CP65-215

To BARRY HUNSAKER, EL PASO
NATURAL GAS COMPANY,
EL PASO, TEXAS

YOU ARE HEREBY required to appear before the Honorable HARRY W. FRAZEE, Presiding Examiner, of the Federal Power Commission, at 441 G Street NW in the city of Washington, D. C. on the 21st day of September, 1965, at 10:00 o'clock a.m. of that day, to testify concerning the availability of natural gas to Northern California through facilities of El Paso Natural Gas Company.

And you are hereby required to bring with you and produce at said time and place the following: All documents, work papers, memoranda and other written instruments relating to the above matters.

IN WITNESS WHEREOF, the undersigned, being duly and lawfully authorized so to do, has hereunto set his hand at Washington, D. C., this 16th day of September, 1965.

HARRY W. FRAZEE
Presiding Examiner

Fail not at your peril.

IN TESTIMONY WHEREOF, the seal of the Federal Power Commission has been affixed this 16th day of September, 1965.

FEDERAL POWER COMMISSION

Washington, D. C. 20426

In reply refer to:

SEC

Docket Nos. CP65-213,

et al.

Pacific Gas Transmission
Company, *et al.*

The Attorney General of
the State of Texas

Box R, Capitol Station
Austin, Texas 78711

October 14, 1965

Dear Mr. Attorney General:

The motion of the State of Texas to reverse the ruling of the Presiding Examiner and issue subpoena duces tecum tendered for filing on September 21, 1965, has been construed as an appeal from Examiner's ruling and as such is hereby rejected.

Section 1.28(a) of the Rules of Practice and Procedure permits appeals to the Commission from the Presiding Examiner's ruling under extraordinary circumstances where prompt decision by the Commission is necessary to prevent detriment to the public interest and the examiner refers his ruling to the Commission for determination. The Presiding Examiner found "... no extraordinary circumstances here . . . where a prompt decision on this question is required by the Commission or is necessary to prevent detriment to the public interest" (see Transcript Page 816), and thereby refused to certify to the Commission the ruling

which is the subject of the tendered filing. Moreover, the motion does not recite pressing reasons for immediate review of the Examiner's ruling by the Commission.

Copies of the rejected filing are returned herewith.

Very truly yours,

Joseph H. Gutride
Secretary

Enclosure No. 23706
cc: All Parties

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL POWER COMMISSION

In the Matter of the	)	Docket Nos. CP65-213
Application of Pacific	)	CP65-214
Gas Transmission Company	)	CP65-215

**APPLICATION FOR RECONSIDERATION AND
FOR WAIVER OF THE COMMISSION'S RULES, IF
NECESSARY, AND REQUEST FOR COMMISSION
DETERMINATION OF THE QUESTION OF
"EXTRAORDINARY CIRCUMSTANCES"**

TO THE HONORABLE FEDERAL POWER
COMMISSION:

Comes now the State of Texas in the above entitled and numbered matter, and respectfully applies for reconsideration by the Commission of a "rejection" emanating from the Federal Power Commission offices of this party's Motion directed to the Federal Power Commission To Reverse Ruling of Presiding Examiner and Issue Subpoena Duces Decum, and respectfully applies for waiver of the Commission's Rules, if necessary, and for a determination by the Commission of the question of "extraordinary circumstances" in connection with said Motion to the Commission; and, in support of the aforesaid application, submits the following:

I.

That on September 21, 1965 at 4:43 P.M. the State of Texas filed its Motion "To Reverse Ruling of Presiding Examiner and Issue Subpoena Duces Tecum," as evidenced by the Federal Power Commission file

mark thereon, which Motion, although a part of the Federal Power Commission file as aforesaid, was nevertheless returned to the State of Texas by the Secretary under letter of October 14, 1965.

Apparently, judging from the contents of said letter, the Secretary has "rejected" said Motion of the State of Texas and in so doing has passed on the merits of such pleading, which, the State of Texas submits, is arbitrary, presumptuous on the part of the Secretary, and wholly unauthorized by the Rules of Practice and Procedure Before the Federal Power Commission.

Said Motion bearing the following file mark: "Filed Office of the Secretary Sep 21 4:43 PM '65 Federal Power Commission," and a copy of said letter are attached hereto, marked Exhibits "A" and "B" respectively, and made a part hereof for all purposes.

The State of Texas has received no Commission Order either granting or denying its said Motion, nor has said Motion remained on file with the Commission for a period of 30 days awaiting Commission action, since it was extracted therefrom by the Secretary as aforesaid.

The Rules recognize situations of extraordinary circumstances requiring appeals to the Commission during the course of hearings. To take the position that the merits of such appeals can be passed on by the Secretary of the Commission where there is no referral by the Presiding Examiner is to shut the door on many such appeals themselves when a party firmly believes that a prompt decision by the Commission is necessary to prevent detriment to the public interest and furthermore is to ignore the spirit of the Rules, especially in

the light of the provisions of Section 1.28 thereof, wherein questions referred by Presiding Examiners to the Commission and appeals taken to the Commission from rulings of the Presiding Examiners are recognized together and wherein there is a mandatory requirement of referral to the Commission in extraordinary circumstances when a prompt decision is necessary to prevent detriment to the public interest and wherein there is no provision for any officer or party to determine the existence of such instances. It is therefore submitted that under the Rule, if a party to a proceeding appeals to the Commission in such instances, only the Commission itself can determine whether in fact such extraordinary circumstances exist as to require reversal of a ruling by a Presiding Examiner in order to prevent detriment to the public interest.

Conversely, the Rules do not provide, either in letter or spirit, for a "rejection" by the Secretary of a pleading and for removal and return to a party by the Secretary of a portion of a Federal Power Commission file.

II.

That the State of Texas, in support of its said Motion attached hereto as Exhibit "A" says that the true test of admission or exclusion of evidence in any Commission proceeding is one of relevancy and materiality. Section 1.26(a) of the Commission's Rules of Practice and Procedure requires all evidence to be admitted when pertinent to the issues in the proceeding except evidence which is unduly repetitious or cumulative or evidence which is "not of the kind which would affect

reasonable and fair-minded men in the conduct of their daily affairs.”

The State of Texas, by its Motion directed to the Commission, seeks to make the testimony and exhibits of the witness, Barry Hunsaker, a part of the record in this proceeding in order to show thereby that there is in fact a dependable, alternate method of supplying gas to California at a firm price and a price cheaper than the price of gas to be imported to California under the pending application.

Such evidence is material, relevant, confined squarely to the issues in this proceeding, and is the kind which would directly affect reasonable and fair-minded men in the conduct of their daily affairs if faced with deciding from which source to obtain additional gas for the Northern California market.

III.

That only when the aforesaid available evidence is made a part of the record herein can there be a consideration of the merits of said alternate source of gas and can true comparisons be made between the supply, cost and price of said alternate source of gas and the gas sought to be imported to California under the pending application.

IV.

That the State of Texas has sought to have the testimony, together with the exhibits in connection therewith, of the witness, Barry Hunsaker made a part of the record of this proceeding so that said testimony and exhibits can be considered and so that said witness can be cross-examined for the purpose of accurately and thoroughly completing the record, which completed

record, the State of Texas submits would evidence an alternate domestic supply of gas more desirable than the imported supply sought under the pending application.

V.

That the State of Texas, in appealing its said Motion directly to the Commission, is merely undertaking to have the relevant and material evidence of an alternate source of supply of gas, which can be gained from the testimony, exhibits and cross-examination of the witness, Barry Hunsaker, made a part of the record of this proceeding for consideration.

VI.

That if the aforementioned matters are not considered in this hearing at this time, a conclusion shall be reached and a ruling made in this hearing affecting literally millions of people in the San Francisco Bay Area and in fact many thousands more throughout Northern California without any consideration herein of the availability of gas from Texas for the California market, which may well be the cheapest and most desirable source of gas available to California at this time; and the State of Texas submits that the evidence sought by it for consideration would prove such proposition true. An exclusion of such evidence from this hearing will indeed result in a detriment to the public interest.

WHEREFORE, the Commission is respectfully requested to reconsider the aforesaid previous "rejection" of the State of Texas' Motion to Reverse Ruling of Presiding Examiner and Issue Subpoena Duces Tecum and to waive the Commission's Rules, if neces-

sary, and to determine the question of “extraordinary circumstances” with reference to said Motion; and, in connection therewith, to reverse the ruling of the Presiding Examiner and to issue the subpoena duces tecum, as requested in said Motion of the State of Texas attached hereto as Exhibit “A” and previously directed to the Honorable Commission.

Respectfully submitted,

WAGGONER CARR
Attorney General of Texas

C. L. SNOW, JR.
Assistant Attorney General

LINWARD SHIVERS
Assistant Attorney General

C. DANIEL JONES, JR.
Assistant Attorney General

STATE OF TEXAS
COUNTY OF TRAVIS

VERIFICATION

C. Daniel Jones, Jr., being first duly sworn says that he is an Assistant Attorney General of the State of Texas, that he has read the foregoing and is familiar with the contents thereof, that he has executed the same for and on behalf of the State of Texas and is authorized to do so, and that the facts set forth therein are true and correct to the best of his knowledge, information, and belief.

C. DANIEL JONES, JR.

Subscribed and sworn to before me this the 21st day
of October, 1965.

VIRGINIA OWENS
Notary Public in and for Travis
County, Texas

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Sec. 1.17 of the Rules of Practice and Procedure.

Dated Austin, Texas, this 21st day of October, 1965.

C. DANIEL JONES, JR.

EXHIBIT "A"

"Filed, Office of the
Secretary Sep 21 4:43 PM '65
Federal Power Commission"

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

In the Matter of	)	Docket Nos. CP65-213
Pacific Gas Transmission	)	CP65-214
Company	)	CP65-215

**MOTION OF THE STATE OF TEXAS TO
REVERSE RULING OF PRESIDING EXAMINER
AND ISSUE SUBPENA DUCES TECUM**

TO THE FEDERAL POWER COMMISSION:

Comes now the State of Texas and respectfully moves the Commission to reverse the rulings of the Presiding Examiner in this proceeding excluding the testimony of El Paso Natural Gas witness Barry Hunsaker and denying the issuance of a subpoena duces tecum to compel his testimony.

During the prehearing conference of these proceedings held on July 22, 1965, counsel for the State of Texas made available to the parties to this proceeding 20 pages of proposed testimony and 6 exhibits of Barry Hunsaker, Chief Pipeline Engineer for El Paso Natural Gas Company.

All parties to these hearings were advised that this evidence would be sought to be made a part of the record by reference in these proceedings which commenced on September 15, 1965.

Mr. Barry Hunsaker is the Chief Pipeline Engineer for El Paso Natural Gas Company, a party to these proceedings. El Paso Natural Gas Company is a major

transporter of gas to California, for ultimate use both in southern California and northern California.

The evidence sought by the State of Texas to be presented by witness Hunsaker would show that there is an alternative method of supplying gas to California at a firm price and a cheaper price than the gas sought to be imported to California by the pending application.

Witness Hunsaker has made a study showing the cost of delivering an additional 325,000 Mcf/day through one of its existing pipelines to the California border at Topock. This study was presented in the Gulf Pacific hearings (Docket No. CP64-76) but there is no application pending based on this study. This supply is in excess of the Tailored Gas Supply Program applications made therein.

If required to testify, Mr. Hunsaker would present evidence showing that there is an alternative supply of gas available to Pacific Gas & Electric and that this alternative supply of gas would be available to Pacific Gas and Electric in volumes sufficient to fulfill P G & E's requirement for gas now sought to be supplied from the Canadian sources, at a cost less than the cost of P G & E's proposed additional Canadian supplies.

On August 16 and 27, 1965, motions were filed by the various California companies opposing making the evidence offered by the State of Texas through witness Hunsaker a part of the record. On August 23, 1965, and September 9, 1965, the State of Texas filed their reply in support of the inclusion of the proposed testimony and exhibits of witness Hunsaker. (Excerpts from these replies are attached and made a part hereof for the purpose of showing the State's position in request-

ing that the motions by the various California companies to exclude the testimony and exhibits of Barry Hunsaker be denied.)

No objection to the introduction of this testimony was offered by Staff Counsel for the Commission.

At the opening of the hearings on September 15, 1965, the Presiding Examiner sustained the objections to the inclusion of proposed evidence of the State of Texas stating that (Tr. p. 139, 140):

“The testimony and supporting exhibits sought to be incorporated herein was given in the Gulf Pacific matter by an employee of and witness for the El Paso Natural Gas Company by the name of Barry Hunsacker (sic). The record in Gulf Pacific has been closed and is presently under consideration by Examiner Kurtz. The testimony and supporting exhibits of the Witness Barry Hunsacker (sic) sought to be incorporated herein relate to the location, design and cost of facilities to enable El Paso to deliver an additional 325 Mcf per day of natural gas in the Gulf Pacific Case, as well as an additional 250 Mcf per day as proposed by El Paso in Docket No. CP64-76, which docket was also consolidated with the Gulf Pacific Matter.

“These volumes are to be delivered if certificated to the southern California companies for distribution by them to the southern California markets, not to the San Francisco or northern California markets for which Pacific Gas Transmission and P G & E herein seek additional supplies of gas.

“Motions were filed by the Pacific Gas Transmission Company, the Public Utilities Commission of California, the City and County of San Francisco and the Pacific Lighting Companies to exclude this testimony and the supporting exhibits of Barry Hunsacker (sic).

“Replies to these motions were filed by the State of Texas and by TIPRO. El Paso apparently knows nothing about this proposal of the State of Texas for there is no application here by El Paso for authorization to increase its pipeline capacity to transport this additional gas. It has, however, asked for authorization in CP63-204 and CP64-76, the Gulf Pacific Case, to increase its pipeline capacity to deliver an additional 575 Mcf per day, which appears to be its full capacity.

“Also the testimony sought to be incorporated herein relates to an entirely different project, with sources of supply and delivery points different from those here under consideration.

“This proposal to incorporate into this record the testimony concerning an entirely different project from a completely different record present an innovation to the rules of evidence.

“The motions to exclude the proposed testimony and supporting exhibits of the Witness Barry Hunsacker (sic) are sustained.”

The Presiding Examiner was in error in ruling that the evidence sought to be used by the State of Texas was evidence in the Gulf Pacific record (Docket No. CP64-76) to be used in support of a pending application.

As stated by the attorney for El Paso Natural Gas, Mr. Frank Reifsnnyder at page 427 of the transcript in this (PGT) hearing:

“This alternate showing that he made, which was not a part of El Paso’s application, showed the reinforcement of the existing system, and the engineering and the costs that would be sustained in order to accomplish that.”

The State of Texas broadened its original request for the presentation of evidence by reference of Witness Hunsaker to cover "alternative supplies of gas" and requested that the Presiding Examiner issue a subpoena duces tecum to require the production of Mr. Hunsaker's requested evidence. (A copy of the application for the subpoena and the subpoena are attached to and made a part hereof and references made thereto for the purpose of showing the grounds for issuance of a subpoena.)

After oral argument held before the Presiding Examiner on September 16, 1965, the request for subpoena to adduce the required information was denied.

The Examiner again erred in ruling that the evidence of Barry Hunsaker should not be secured by issuance of subpoena duces tecum. The State of Texas sought this subpoena for the purpose of showing the availability of natural gas to northern California through sources of supply and transmission facilities known to the witness Barry Hunsaker. The Examiner ruled at page 429 of the transcript as follows:

"There is no indication here by El Paso . . . that they have supplies of gas to sell in the northern California market . . . the application for a subpoena for the witness Barry Hunsaker is denied."

Briefly, not only is the testimony of witness Hunsaker highly relevant and material but it is in keeping with the holding in the *City of Pittsburgh v. Federal Power Commission*, 237 F 2d 741 (D. C. Cir. 1956) and the "*Rock Springs*" case, 30 FPC 77 (1963), that the Commission should consider alternative means to determine whether a particular proposal would serve the public convenience and necessity.

Accordingly, it is respectfully requested that the Presiding Examiner's rulings be reversed and that the testimony and exhibits of witness Hunsaker be made a part of the record in this proceeding, and that a subpoena issue to require witness Hunsaker to present evidence in these proceedings.

Respectfully submitted,
THE STATE OF TEXAS
WAGGONER CARR
Attorney General of Texas
C. L. SNOW, JR.
Assistant Attorney General
C. DANIEL JONES, JR.
Assistant Attorney General
LINWARD SHIVERS
Assistant Attorney General

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA)

VERIFICATION

LINWARD SHIVERS, being first duly sworn, on oath says that he is an Assistant Attorney General of the State of Texas, that he has signed the foregoing motion to reverse ruling of Presiding Examiner and issue subpoena duces tecum, that he is authorized to do so, and that all statements therein contained are true and correct to the best of his knowledge, information and belief.

LINWARD SHIVERS

Subscribed and sworn to before me this 21st day of September, 1965.

ANN G. LANZILATTA

Notary Public in and for the
City of Washington, District
of Columbia

(SEAL)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all parties of record in these proceedings in accordance with the requirements of Section 1.17 of the Rules of Practice and Procedure.

Dated at Washington, D. C., this 21st day of September, 1965.

LINWARD SHIVERS

Excerpt from "REPLY OF THE STATE OF
TEXAS TO MOTIONS TO EXCLUDE TESTI-
MONY AND EXHIBITS OF STATE OF
TEXAS' WITNESSES BARRY HUNSAKER,
BOB R. HARRIS AND ARLEN EDGAR,
WITNESS FOR PBPA"

(Filed August 23, 1965)

I.

"Without restating the objections declaring the irrelevancy of the Hunsaker, Harris and Edgar testimony, certain facts are set forth for the benefit of the Examiner in clarifying the record.

"Hunsaker's testimony offered by incorporation by reference in this proceeding is not the testimony offered

in the Gulf Pacific Case in support of a then pending application or a subsequently filed application.

“El Paso made an Original Application to deliver an additional 250 M²cf/d via an *existing line* over and above the volume it was then transporting (Docket No. CP 64-76).

“El Paso made a First Amendment to its Original Application by preparing an *alternative* project to deliver, 575 M²cf/d via a *new line*, not intending to supercede the basic application of 250 M²cf/d, but as an alternative thereto.

“El Paso, also, at the request of the Pacific Lighting Companies, made a study of the possibility of delivering 325 M²cf/d in addition to the 250 M²cf/d proposed in the basic application via an *existing pipeline*, however, *El Paso did not file an application on this study*.

“Therefore, the testimony offered by Hunsaker is not testimony offered in support of an application, but is one of the contrary, an independent study relating to 325 M²cf/d through the existing pipeline *in addition* to the 250 M²cf/d originally applied for. The Hunsaker’s testimony incorporated by reference and his exhibits will show to the Examiner the cost of the additional facilities and that El Paso can deliver gas to the California-New Mexico border at around 22.5¢ per Mcf which is a competitive price with the foreign gas that the applicants in this hearing request to be brought in. This price could possibly be reduced even more as set out in the testimony of Mr. Moulton hereinafter quoted in this reply, and found in attached Exhibit A.

“It is undisputed that neither El Paso nor the State

of Texas have a competitive project to that of the applicants before the Examiner in this proceeding.”

Excerpt from “REPLY OF THE STATE OF
TEXAS TO MOTIONS TO EXCLUDE TESTI-
MONY AND EXHIBITS OF BARRY
HUNSAKER BY SOUTHERN CALIFORNIA
GAS COMPANY, SOUTHERN COUNTIES
GAS COMPANY OF CALIFORNIA, AND
PIPE LINE GAS SUPPLY COMPANY”

(Filed September 9, 1965)

I.

“It is undisputed that the testimony and exhibits of Barry Hunsaker were prepared by El Paso Natural Gas Company (El Paso) for proposed resale in *Southern* California in fact, and as stated in our original reply, the study was initiated at the request of these very proponents of this motion to exclude.

“The interesting fact obviously misunderstood by Southern Gas Company, et al., is that El Paso has two points of delivery at the Arizona-California line. One being at *Blythe* station which is used for southern California service. The second point of delivery is to the north of Blythe and is at *Topock*. The Topock station is primarily used for northern gas delivery.

“The study under which the testimony and exhibits offered was based on delivery at the Topock station.

“Therefore, it is inconceivable that the testimony and exhibits are not relevant to Northern California, because *if* El Paso were to deliver to Northern California the same station would be used—that being *Topock*.

II.

“It is further undisputed that El Paso is not an applicant for a competitive certificate in this proceeding. However, alternative service is not irrelevant and immaterial for the simple reason that the Examiner does not have to *select* an applicant based on a comparative showing. This Examiner has to grant or deny the one application, but in so doing he should be free and has the obligation to consider all relevant and material testimony and exhibits that tend to show a comparable and less costly alternative, *even though that alternative is not now seeking a competitive application.* (Rock Springs and City of Pittsburg; cited in original reply)”

Nat. Energy Bd.
Exhibit No. 50
April 6-8, 1965

PACIFIC GAS AND ELECTRIC COMPANY

245 Market Street
San Francisco 6, California

March 23, 1965

Westcoast Transmission Company Limited
1155 West Georgia Street
Vancouver 5, British Columbia

Gentlemen:

This is in reply to your letter of March 12, 1965, addressed jointly to Alberta and Southern Gas Co., Ltd., Pacific Gas Transmission Company, and Pacific Gas and Electric Company, offering to sell us 207,000 Mcf per day of natural gas at the southern terminus of your pipeline near Sumas, Washington, at an initial

price of 29 cents (U.S.) per Mcf, based on a 92% load factor.

We appreciate your submitting this offer to us, but we have already procured in Alberta a much more economic supply of gas in quantities that will meet our needs at least through 1967. The sum of your price, the estimated cost of moving the gas from Sumas to Pendleton, and the incremental cost of transmitting it from there to the San Francisco Bay area would be greatly in excess of the field price for our Alberta gas plus the incremental cost of transporting it to the San Francisco area through our existing Alberta-to-California pipeline.

Moreover, should we be prevented for any reason from taking the gas which we have purchased in Alberta, our alternative supply would be from the gas-producing areas of southwestern United States. The cost of gas from this source delivered to the San Francisco area would be much lower than the delivered cost of your gas.

We hope that you will be in a position at some future time to offer us a supply of gas at a competitive price. Any such offer would, I assure you, receive very serious consideration.

Very truly yours,
ROBERT H. GULER

RHG:S

**PACIFIC GAS AND ELECTRIC COMPANY
COMPARATIVE COSTS OF ADDITIONAL
OUT-OF-STATE GAS**

The following comparison of the incremental costs of additional out-of-state gas in the range of 200 M²cf

delivered at the California border has been prepared from sources hereinafter described.

	Range of Costs—Cents per Mcf
Alberta gas	21.65
Westcoast gas	30.8 to 32.3
El Paso gas	22.53

Alberta gas

The cost at the California-Oregon border is based on estimates prepared in connection with the plan now pending before the Canadian National Energy Board and the Federal Power Commission for an additional 100 M² cubic feet per day late in 1966 and a second 100 M² late in 1967. Since 1968 would be the first full year of operation for the entire increase, the incremental cost is for that year. This cost is the difference between the cost for that year (a) of 615 M² under an export permit expiring in November 1989 and (b) of 415 M² under a permit expiring in November 1986. The costs for 1969 and 1970 do not change appreciably. Table 1 shows the derivation of the incremental cost. The figures for 615 M² appear in tse P.G.T. application to F.P.C., Exhibit P (2) and for 415 M² from P.G.&E. work papers.

Westcoast gas

The range of costs and other derivation is shown on Table 2. The costs at Pendleton are those supplied by Westcoast. The transport cost from Pendleton to the California-Oregon border is a proration on the mileage basis of transport costs for 200 M² of Alberta gas from Kingsgate to the California border. The use of the incremental costs furnished by Westcoast for exchange between Sumas and Pendleton appears inconsistent

with F.P.C. practices of requiring the use of rolled-in costs. Such costs, while not furnished, would be higher than the incremental costs and would increase the costs shown at the California border.

El Paso gas

The source of the cost shown appears on Table 3. It has been assumed that El Paso would make 200 M² available to P.G.&E. out of its 575 M² project if that market became available to it.

P.G.&E. Transportation Costs

The estimated incremental costs of transporting 200 M² of additional gas from the Oregon border to Antioch, neglecting the other uses of this section of the Alberta-California line, is between 2" and 2.5¢.

The Topock-Milpitas lines would require some looping to handle 200 M² in addition to the present El Paso contract demand of 1025 M²cf per day (14.9¢ base). No engineering design nor cost estimate has been made for this increase. It appears to be within the range of reasonableness to assume that the unit incremental transportation cost would be some 5 to 6¢ per Mcf.

OF ALBERTA AND SOUTHERN GAS DELIVERED AT CALIFORNIA-OREGON BORDER

1968 Costs

	415 M ² CF/Day		615 M ² CF/Day		200 M ² CF/Day Incremental Cost	
	Cost M\$	Volume M ² CF	Cost M\$	Volume M ² CF	Cost M\$	Volume Cost M ² CF Per Mcf
Canadian Dollars						
Field Cost of Gas.....	28366	153300	42951	228100	14085	74800 18.83
Alberta and Southern Costs.....	725725		734		9	
Alberta Gas Trunk Line Costs.....	9689		10127		438	
Cost Delivered to Alberta Nat- ural Gas	39280	153300	53321	228100	14532	74800 19.43
Alberta Natural Gas Costs.....	3673		4407		734	
Cost Delivered to Pacific Gas Transportation	42953	153300	58219	228100	15266	74800 20.41
Less Portion Paid in U.S.\$	6567		6836		269	
Balance—Canadian \$	36386		51383		14997	
U.S. Dollars						
Balance in U.S.\$ at .025 Exchange	33657		47529		13872	
Total Cost to Pacific Gas Trans- mission	40224	153300	54365	228100	14141	74300 18.91
Deduct Pacific Gas Transmission						
Compressor Fuel	269	1024	836	3500	567	2435 22.82
Balance	39955	152276	53529	224591	13574	72315 18.77
Pacific Gas Transmission Costs						
Compressor Fuel	269		336		567	
Other	13413		14931		1513	
Total	13682	152276	15767	224591	2085	72315 2.88
Total at California-Oregon Border...	53637	152276	69296	224591	15659	72315 21.65

INCREMENTAL COST OF 200 M²CF PER DAY OF WESTCOAST GAS DELIVERED TO CALIFORNIA-OREGON BORDER

	Case 1	Case 2
Price at Sumas	(a) 29.0¢/Mcf	(d) 28.1¢/Mcf
Westcoast prediction of El Paso exchange charge		
Sumas-Pendleton	(b) <u>1.7¢</u>	(e) <u>1.1¢</u>
Total at Pendleton (Stanfield tap)	30.7¢	29.2¢
Incremental P.G.T. transport cost to California-Oregon border	(c) <u>1.6¢</u>	<u>1.6¢</u>
Total	32.3¢	30.8¢

Notes:

- (a) Price quoted by Mr. McMahon during October 8, 1964 meeting.
- (b) Price quoted at October 8, 1964 meeting and supported by undated table prepared by El Paso and furnished by Mr. Allyne. Table shows incremental costs of 1.65¢/Mcf for 100 M². This cost is lower than costs for 50 M² of 2.91¢, for 250 M² of 2.92¢, for 350 M² of 3.57¢ and for 400 M² of 4.14¢.
- (c) Computed from P.G.T. application to F.P.C. and working papers:

Thousands of Dollars						
1960 Costs	Vol. Calif. Border		Com- pres- sor Fuel	Other Costs	Total	Cost per Mcf.
	Avg. Per Day	Annual				
	615	224,591	836	14,931	15,767	7.02¢
	415	151,276	269	13,413	13,682	8.98¢
	200	72,315	567	1,518	2,085	2.89¢
Kingsgate to California-Oregon border						613 miles
Stanfield to California-Oregon border						336 miles
Incremental cost Stanfield to California-Orgeon border						
						$2.89 \times \frac{336}{613} = 1.58¢$

- (d) Price at 100% load factor quoted in letter of November 17, 1964 from Mr. Allyne to Mr. Moulton.
- (e) Price from same letter, Case 4, 213 M² from Fort Nelson.

EL PASO ESTIMATES OF COST OF GAS DELIVERED TO THE CALIFORNIA BORDER

Incremental Costs (a)

	Project			
	250 M ² /Day		575 M ² /Day	
	L.F.	Cost/Mcf¢	L.F.	Cost/Mcf¢
1968	91.66	20.57	95.0	22.66
1969	94.74	20.69	95.0	23.01
1970	98.3	20.05	95.0	22.69
Average 14.9¢ base	94.9	20.43		22.79
Average 14.73¢ base		20.2		22.53

Note: (a) I.N.G.A. Bulletin of November 1964 digest of Travis Petty testimony in El Paso et al F.P.C. hearings October 7-9, 1964.

UNITED STATES OF AMERICA FEDERAL POWER COMMISSION

In the matter of	)	Docket Nos. CP-213
Pacific Gas Transmission	)	CP-214
Company	)	CP-215

APPLICATION OF THE STATE OF TEXAS FOR SUBPENA DUCES TECUM OF WITNESS BARRY HUNSAKER

Comes now the State of Texas and respectfully requests the Presiding Examiner to issue a Subpena Duces Tecum to Barry Hansaker of El Paso Natural Gas Company for the following reasons:

I.

The requested witness, Barry Hunsaker, is not a witness for the State of Texas, and can not be called unless this Subpena is issued.

II.

The testimony of the requested witness Barry Hunsaker will show to the Commission that El Paso Natural Gas Company has existing facilities and supplies to furnish at least 200 million cubic feet per day of natural gas to Northern California, even if all of its pending applications before the Federal Power Commission were granted.

III.

The testimony of the requested witness Hunsaker will show that the incremental costs of El Paso gas will be less than the incremental costs of the applicant in the above styled proceeding.

IV.

The testimony of the requested witness Barry Hunsaker is needed to provide the Federal Power Commission a complete record of possible alternative supply to the application here made under the rulings in Opinion No. 393 of the Commission and *City of Pittsburgh v. Federal Power Commission*, 237 F.2d 741.

V.

No witness is otherwise available to the State of Texas who possesses the knowledge and qualifications of Barry Hunsaker, and the State of Texas can not otherwise present the testimony and evidence needed in this proceeding.

Wherefore the State of Texas respectfully requests the Presiding Examiner to issue the attached Subpena

Duces Tecum to Barry Hunsaker of El Paso Natural Gas Company.

Respectfully Submitted,
THE STATE OF TEXAS
WAGGONER CARR
Attorney General of Texas
LINWARD SHIVERS
Assistant Attorney General
C. L. SNOW, JR.
Assistant Attorney General
C. DANIEL JONES, JR.
Assistant Attorney General

September 16, 1965

CITY OF WASHINGTON)
DISTRICT OF COLUMBIA)

VERIFICATION

LINWARD SHIVERS, being first duly sworn, on oath says that he is an Assistant Attorney General of the State of Texas, that he has signed the foregoing Application for Subpena Duces Tecum of Barry Hunsaker, that he is authorized to do so, and that all statements therein contained are true and correct to the best of his knowledge, information and belief.

LINWARD SHIVERS

Subscribed and sworn to before me this 16th day of September, 1965.

ANN G. LANZILATTA
Notary Public in and for the
City of Washington, District
of Columbia.

My Commission expires June 14, 1967.

FPC Form 44

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Subpena Duces Tecum

In re: PACIFIC GAS TRANSMISSION

Docket Nos. CP65-213;

CP65-214; CP65-215

To BARRY HUNSAKER, EL PASO
NATURAL GAS COMPANY,
EL PASO, TEXAS

YOU ARE HEREBY required to appear before the Honorable HARRY W. FRAZEE, Presiding Examiner, of the Federal Power Commission, at 441 G Street NW in the city of Washington, D. C. on the 21st day of September, 1965, at 10:00 o'clock a.m. of that day, to testify concerning the availability of natural gas to Northern California through facilities of El Paso Natural Gas Company.

And you are hereby required to bring with you and produce at said time and place the following: All documents, work papers, memoranda and other written instruments relating to the above matters.

IN WITNESS WHEREOF, the undersigned, being duly and lawfully authorized so to do, has hereunto set his hand at Washington, D. C., this 16th day of September, 1965.

HARRY W. FRAZEE
Presiding Examiner

Fail not at your peril.

IN TESTIMONY WHEREOF, the seal of the Federal Power Commission has been affixed this 16th day of September, 1965.

EXHIBIT "B"
FEDERAL POWER COMMISSION

Washington, D. C. 20426

In reply refer to:

SEC

Docket Nos. CP65-213,

et al.

Pacific Gas Transmission
Company, *et al.*

The Attorney General of
the State of Texas
Box R, Capitol Station
Austin, Texas 78711

Dear Mr. Attorney General:

The motion of the State of Texas to reverse the ruling of the Presiding Examiner and issue subpoena duces tecum tendered for filing on September 21, 1965, has been construed as an appeal from Examiner's ruling and as such is hereby rejected.

Section 1.28(a) of the Rules of Practice and Procedure permits appeals to the Commission from the Presiding Examiner's ruling under extraordinary circumstances where prompt decision by the Commission is necessary to prevent detriment to the public interest and the Presiding Examiner found "... no extraordinary circumstances here ... where the prompt decision on this question is required by the Commission or is necessary to prevent detriment to the public interest" (see Transcript Page 816), and thereby refused to certify to the Commission the ruling which is the subject

of the tendered filing. Moreover, the motion does not recite pressing reasons for immediate review of the Examiner's ruling by the Commission.

Copies of the rejected filing are returned herewith.

Very truly yours,

Joseph H. Gutride
Secretary

Enclosure No. 23706

cc: All Parties

THE ATTORNEY GENERAL
OF TEXAS

Austin 11, Texas

October 21, 1965

Air Mail
Certified Mail

Mr. Joseph H. Gutride, Secretary
Federal Power Commission
441 G Street Northwest
Washington, D. C. 20426

Re: In the Matter of the Pacific
Gas Transmission Company,
Docket Nos. CP65-213, CP65-214
and CP65-215

Dear Sir:

Please find enclosed the original and nineteen (19) copies of the following pleading, which we ask that you file and hand to the Commission for consideration in order that the Commissioners may pass on the merits of same, towit:

Application For Reconsideration And For
Waiver Of The Commission's Rules, If Nec-
essary, And Request for Commission Deter-
mination of the Question of "Extraordinary
Circumstances."

The filing and consideration by the Commission of the aforementioned pleading are necessitated by the "rejection," presumably by the Secretary, of our prior Motion in the captioned matter directed to the Commission itself and the return to our offices of said Mo-

tion by the Secretary long after said Motion had become a part of the captioned file, as indicated by the Federal Power Commission file mark thereon dated September 21, 1965, at 4:43 P.M. We submit that a return to our offices of a filed pleading of the State of Texas is somewhat presumptuous on the part of the Secretary, to say the least, and a "rejection" of same is wholly unauthorized under the rules.

In that connection, the State of Texas has not received any Commission Order whatsoever granting or denying its said Motion nor has said Motion remained on file with the Commission for a period of thirty (30) days awaiting Commission action. The State of Texas has merely been informed by letter from the Secretary that its Motion "has been construed as an appeal from Examiner's ruling and as such is hereby rejected." The identity of the "construer" has remained a mystery; however, the letter on its face is not an Order of and does not reflect action by the Commission.

Hence, we enclose the aforementioned application accompanied by the foregoing request.

Very truly yours

C. DANIEL JONES, JR.

Assistant tAttorney General

CDJ/fb

encl.

cc Commissioner, Joseph C. Swidler, Chairman

cc Commissioner, L. J. O'Connor, Jr.

cc Commissioner, Charles E. Ross

cc Commissioner, David S. Black

cc Commissioner, Carl E. Bagge

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Joseph C. Swidler, Chairman;
Charles R. Ross, David S.
Black, and Carl E. Bagge.

Docket. Nos.

CP65-213

Pacific Gas Transmission Company)

CP65-214

CP65-215

**ORDER DENYING RECONSIDERATION,
WAIVER OF THE COMMISSION'S RULES AND
MAKING DETERMINATION OF THE QUESTION
OF "EXTRAORDINARY CIRCUMSTANCES"**

(Issued December 17, 1965)

On October 22, 1965, and October 26, 1965, the State of Texas (Texas) and the California Gas Producers Association, The Oil Producers Agency of California and the Jade Oil and Gas Company [California Gas Producers] requested that the Commission reconsider its rejection of the motion that they had previously directed to it requesting a reversal of rulings made by the Presiding Examiner denying the issuance of subpoenas duces tecum.¹

The above-described Movants also requested that

¹The Independent Petroleum Association of America, The Texas Independent Producers and Royalty Owners Association, The West Central Texas Oil and Gas Association and The Permian Basin Petroleum Association joined in the motions for reconsideration filed by Texas and California Producers Association. For the purposes of this order all of the aforementioned parties either sponsoring or supporting the aforesaid applications for reconsideration will be referred to as Movants.

the Commission waive its rules, if necessary, and that the Commission determine the question of whether there exists, as they allege, extraordinary circumstances, that warrant the Commission's acting upon the appeal taken by them from the Presiding Examiner's rulings.

Section 1.28(a) of the Commission's Rules of Practice and Procedure provides that "Rulings of Presiding Officers may not be appealed from during the course of hearings except in extraordinary circumstances where prompt decision by the Commission is necessary to prevent detriment to the public interest * * *"

At a prehearing conference held on July 22, 1965, Texas advised that certain testimony and exhibits submitted by Barry Hunsaker, Chief Pipeline Engineer for El Paso Natural Gas Company (El Paso), in the Gulf Pacific hearings (Docket No. CP64-76) would be sought and that it would endeavor to have these made part of the records in these proceedings.

Texas alleged that it could show through the presentation of this Witness that there is an alternative method of supplying gas to California at a firm price and a cheaper price than the gas sought to be imported into California under the pending application.

At the same prehearing conference the California Gas Producers also advised that they sought certain testimony proffered by the Witness McKinney in the Gulf Pacific hearings, *supra*. The Witness McKinney purportedly testified in the Gulf Pacific hearing that if the Gulf Pacific Project were approved by the Commission, The Pacific Lighting Companies would cut-

back on their purchase of gas from El Paso and Transwestern Pipeline Company (Transwestern). California Gas Producers contend that the testimony of the Witness McKinney would show that this cut-back would be large enough to afford Pacific Gas and Electric Company (P.G.&E.) with an alternate supply of gas that could be readily substituted for the Canadian importation of natural gas proposed herein (pg. 2 of California Gas Producers motion filed September 21, 1965). They further allege in the latter motion that these additional supplies of natural gas would be available to P.G. & E. at a lower cost than the proposed Canadian supply of natural gas.²

On September 16, 1965, the Presiding Examiner, after hearing oral argument, denied the request of Texas and The California Gas Producers for the issuance of subpoenas duces tecum with respect to the aforementioned witnesses and certain material they presented in the Gulf Pacific hearings.

On September 21, 1965, the above-noted Movants requested that the Presiding Examiner certify his ruling denying their request for the issuance of subpoenas duces tecum for the Witness Hunsaker and McKinney to the Commission. This request was denied by the Presiding Examiner.

²California Gas Producers point out in their motion that El Paso's Rate Schedule G-X (Excess Gas Service) would be available to P.G. & E., because of the cut-backs envisaged by McKinney's testimony. They claim that the rate chargeable under such excess gas service is 22.22 cents per Mcf (14.73 psia). They also point out that Transwestern's Rate Schedules, covering deliveries of gas to California make provision for a rate of 21 cents for deliveries that are cut-back by The Pacific Lighting Companies (Transwestern LX Gas).

On the same date, the above Movants filed a motion with the Commission requesting it to reverse the ruling of the Presiding Examiner and to issue the subpoenas duces tecum as requested.

By letter dated October 15, 1965, the Secretary of the Commission rejected the motions to reverse the Ruling of the Presiding Examiner. The Secretary in his letters to these movants rejecting their motions stated:

* * * The Presiding Examiner found “. . . no extraordinary circumstances here . . . where a prompt decision on this question is required by the Commission or is necessary to prevent detriment to the public interest” (See Transcript Page 816), and thereby refused to certify to the Commission the ruling which is the subject of the tendered filing. Moreover, the motion does not recite pressing reasons for immediate review of the Examiner’s ruling by the Commission.

Thereafter, Texas on October 22, 1965, and the California Gas Producers on October 26, 1965, filed applications for reconsideration of the rejection of its motion to reverse the Ruling of the Presiding Officer and to issue subpoenas duces tecum as requested.

We have examined the pleadings relating to the motion and see nothing therein which would justify our intercession in the normal processes of the hearing. The determination of whether material sought to be secured by subpoena bears sufficient materiality and relevance is a matter on which the hearing examiner will normally be much better equipped to pass. Our intercession may occasionally be warranted where the examiner’s ruling reflects a misunderstanding as to the

scope of the proceeding or where there are extraordinary circumstances which require avoidance of any possibility of delay in the event the examiner's ruling were to be found to be erroneous. Nothing of the kind is involved here. We note that the movants, with the approval of the examiner, have made an offer of proof with respect to the testimony which is the subject of the motion. It will be available for our consideration when the case comes before us for decision. We are of the opinion that this is the proper way to handle the matter.

The Commission finds:

(1) Movants have not demonstrated the existence of any pressing reasons that require a waiver of the Commission's rules.

(2) Movants have failed to establish the existence of extraordinary circumstances contemplated by Section 1.28(a) of the Commission's Rules of Practice and Procedure that warrant an appeal by them to the Commission of the aforementioned rulings of the Presiding Examiner in the instant proceedings.

(3) The public convenience and necessity requires that the applications for reconsideration filed herein with the Commission by the Movants be denied in all respects.

The Commission orders:

(A) The request by Movants for a waiver of the Commission Rules is denied.

(B) The request for reconsideration of the rejection

tion of motions filed by Movants with the Commission for a reversal of rulings made by the Presiding Examiner is denied.

By the Commission.

(S E A L)

Joseph H. Gutride,
Secretary.

UNITED STATES OF AMERICA
FEDERAL POWER COMMISSION

Before Commissioners: Carl E. Bagge, Acting Chairman;
L. J. O'Connor, Jr.,
Charles R. Ross, and David S. Black.

Docket Nos.

CP-65-213

Pacific Gas Transmission Company)

CP65-214

CP65-215

**ORDER DENYING APPLICATIONS FOR
REHEARING**

(Issued August 4, 1966)

On June 15, 1966, the Commission issued Opinion No. 495 in this proceeding. A certificate of public convenience and necessity was thereby issued to Pacific Gas Transmission Company (PGT) authorizing it to import from Canada an additional 100,000 Mcf of natural gas commencing on or about November 1, 1966, and an additional 100,000 Mcf of natural gas commencing on or about November 1, 1967 for transportation and sale to the Pacific Gas and Electric Company (PG&E) in California. Applications for rehearing of Opinion No. 495 and its accompanying order were filed July 8, 1966 by the State of Texas (Texas), July 11, 1966 by Texas Independent Producers and Royalty Owners Association, West Central Texas Oil and Gas Association, and Permian Basin Petroleum Association (collectively called TIPRO, *et al.*), and July 12, 1966, by California Gas Producers Association, Oil Producing Agency of California, and Jade Oil and Gas Company (collectively called California Producers).

The applicants reiterate the positions taken by them before the Commission decision embodied in Opinion No. 495.

Texas urges that the record establishes the inadequacy of the Canadian gas supplies, including possible limitation on exports by the Canadian government. Texas further argues that the Commission erred because a portion of the Canadian gas is sold under contracts containing price escalation clauses, and in failing to subpoena testimony to establish that gas could be furnished from West Texas more cheaply than the Canadian gas.

TIPRO, *et al.*, also argue the Commission erred in failing to subpoena the testimony referred to and in allowing price escalation provisions in Canadian contracts. TIPRO, *et al.* contend the record shows that cheaper and more dependable gas will be available to Northern California and that the Commission erred in finding a market exists for the sales to PG&E. TIPRO, *et al.*, further argue that there is no present need to utilize the present PGT pipeline facilities to full capacity, and that, in any event, certain conditions proposed by the Commission staff to limit price escalation should have been adopted.

California Producers urge the Commission erred in failing to consider (1) PG&E's estimated cut-backs of California-produced gas to provide a market for the Canadian gas, (2) the impact of certification of the then-pending Gulf Pacific project on PG&E's available supplies, (3) the impact upon the Mandatory Oil Import Program, and (4) the availability of alternative supplies from other pipelines.

All these matters were fully argued by the applicants and considered by the Commission prior to its determination in Opinion No. 495, and no useful purpose would be served by further discussion of them.

The Commission finds:

The assignments of error and grounds for rehearing present no facts or legal principles which would warrant any change or modification in the Commission's Opinion No. 495 and accompanying order.

The Commission orders:

The above-described applications for rehearing of Opinion No. 495 and its accompanying order are denied.

By the Commission.

(S E A L)

Joseph H. Gutride,
Secretary.

